104

CENTRAL VALLEY PROJECT IMPROVEMENT ACT

Y 4.R 31/3:104-36

Central Valley Project Improvement...

:ING

THE

SUBCOMMITTEE ON WATER AND POWER RESOURCES

OF THE

COMMITTEE ON RESOURCES HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 1906

A BILL TO AMEND THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT, AND FOR OTHER PURPOSES

JULY 20, 1995—WASHINGTON, DC

Serial No. 104–36

Printed for the use of the Committee on Resources

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THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT

THURSDAY, JULY 20, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER AND POWER RESOURCES,
COMMITTEE ON RESOURCES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:11 a.m., in room 1334, Longworth House Office Building, Hon. John Doolittle (chairman of the subcommittee) presiding.

STATEMENT OF HON. JOHN DOOLITTLE, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTE ON WATER AND POWER RESOURCES

Mr. DOOLITTLE. The Subcommittee on Water and Power Resources will come to order. The subcommittee is meeting today to hear testimony on H.R. 1906, the Central Valley Project Reform Act of 1995. Under Rule 6(f) of the Committee Rules, any oral opening statements at hearings are limited to the Chairman and the ranking minority member. This will allow us to hear from our witnesses sooner and to help members keep to their schedules. Therefore, if other members have statements, they can be included in the hearing record.

The Central Valley Project is a major Federal water project encompassing two of California's major watersheds, the Sacramento River to the north and the San Joaquin River to the south. It is a system of 20 dams and reservoirs with a total storage capacity of over 12 million acre feet. It provides irrigation to approximately 3 million acres of farmland. The CVP provides municipal and industrial water to more than 2 million Californians. The CVP also has the capacity to produce 2,000 megawatts of hydroelectricity.

In 1992, Congress passed the Central Valley Project Improvement Act, CVPIA. Indeed, Senator Bradley, Mr. Miller, Mr. Beard, Mr. Graff, all of whom we will hear from today, were major proponents in the adoption of the CVPIA. The stated intent of the Act was to improve the way water was managed in California. Experience has shown that some of the provisions worked; others did not.

H.R. 1906 is needed to fix the provisions that aren't working. The testimony at our April 18 hearing in Sacramento demonstrated the need for change. The testimony we hear today will further highlight critical areas where reforms are needed. We have heard from virtually every group affected by the CVPIA that it is not working. The only question is how to fix it?

While some problems can be fixed administratively, some cannot. It is of interest that the Bureau did not pursue serious administrative reforms until legislative reforms were undertaken. The Central Valley Project Reform Act, CVPRA, will preserve what must be preserved in the CVPIA, but it will also reform what must be changed to bring stability and common sense to the management of the Central Valley Project.

The CVPIA mandated that 800,000 acre feet of yield from the Central Valley Project be primarily dedicated to fish and wildlife. The CVPRA reserves the 800,000 acre feet of CVP water for the environment but improves efficiency by providing that after meeting Fish and Wildlife requirements any portion of the 800,000 acre feet can be reused, if possible, by agricultural or urban interests.

The legislation underscores the principles of the December 15, 1994, Bay-Delta agreement by clarifying that all CVP water used to meet Endangered Species Act and Bay-Delta water quality obligations will be credited toward the 800,000 acre feet. The CVPIA required the Bureau to do a projectwide environmental impact statement and prohibited the long-term renewal of existing contracts until the EIS was completed. Unfortunately, it will probably take at least 10 years to complete that process.

The CVPRA replaces the costly and unnecessary series of successive two-year interim renewals of existing water supply contracts and instead provides for a single interim renewal until the PEIS is completed. The CVPIA established a redundant Federal program to double anadromous fish in the Central Valley. Unfortunately, it targeted two species for recovery that are in conflict. One feeds on the other; not a very reasonable goal. The CVPRA replaces this dubious goal with a requirement that the CVP participate in the larger and more realistic ongoing state anadromous fish recovery program which seeks to restore salmon and steelhead.

The CVPIA provided firm water supplies to wildlife refuges identified in the Act. The CVPRA maintains the current CVPIA obligation to reduce refuge supplies by no more than 25 percent because of drought or other conditions but requires the development of efficient water management practices for refuges and clarifies that refuge reductions will be imposed whenever shortages are imposed on CVP contractors within the same division.

The CVPIA requires the Secretary to complete the Trinity River Flow Evaluation Study by September 30, 1996, but does not submit the science or the Secretary's subsequent decision to public review. The CVPRA maintains the study but simply requires that the Secretary open the studies and data for public review and any new instream flow requirement through rulemaking which allows for notice, public comment, and judicial review. It takes a common sense approach and requires that any instream flow regimes vary according to hydrologic and reservoir storage conditions.

The CVPIA established a restoration fund. The CVPRA maintains the restoration fund but improved flexibility by increasing the funding that can be spent on physical fixes already authorized by the CVPIA.

H.R. 1906, the Central Valley Project Reform Act of 1995, was introduced with strong bipartisan support from many members of this committee and several of the members you will indeed hear

from today. It is time I believe for this kind of a common sense change represented by the CVPRA. And the Chair will now recognize the ranking member for any statement he may wish to make.

STATEMENT OF HON. PETER DEFAZIO, A U.S. REPRESENTATIVE FROM OREGON

Mr. DEFAZIO. I thank the Chairman, and although Oregon's principal interest in this is to make certain there are no proposals cropping forth to supplement your water supply from our state, I realize this is a major issue in California, and I would at this point yield to the ranking member of the committee, Mr. Miller, and cede him my time.

STATEMENT OF HON. GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. MILLER. Thank you. Thank you very much, Mr. DeFazio, for yielding this time. Two and a half years ago, the Congress overwhelmingly approved and President Bush signed into law the Central Valley Improvement Act to address the severe inequities and failures associated with the operation of the Central Valley Project.

The law was designed to reform water policy designed over 50 years ago when California was a very different place. We had a lengthy and a very vigorous debate. Not surprisingly, those who long enjoyed the massive subsidies and supplies of the Central Valley Project fought to retain their special privileges against the needs of over 20 million other Californians.

The old order overwhelmingly lost that debate. Reform was demanded—reform in purpose, in distribution, in management, and in financing. Over the past two years, we have begun the effort to push those reforms into place. We have already seen major benefits. Last December, the comprehensive Federal-state Bay-Delta agreement was finally negotiated. Standard and Poor's has upgraded state bonds in response to unprecedented progress on ending our state's divisive water wars.

H.R. 1906 is brought to you by those who want to reopen the war. It was drafted by those who have bitterly fought all efforts to modernize water policy and bring it into conformity with our national goals on the environment, on economic growth, on jobs, and on deficit reduction. They are back for one more bite at the apple.

The authors of this legislation do not speak for all Californians. Indeed, on the same day that eight Californians introduced this bill, 15 joined in a letter supporting the Central Valley Improvement Act and opposed sweeping amendments that would alter the goals and policies of the law. There is no consensus behind this bill.

Changes can always be justified if they improve our ability to meet the goals of the policy. The Administration is working to address legitimate concerns through a rulemaking process and other administrative actions. But let us be very clear. H.R. 1906 is not about fixing the CVPIA. It is about destroying it—repealing the reforms and giving back control of our water to subsidize agriculture at the expense of our cities, our suburbs, our businesses, our recreation, our commercial fishing interest, and the environment, and millions of taxpayers who subsidize this project.

I look forward to these hearings, and I have no doubt we will demonstrate that there is no consensus in support of this sweeping repeal of the Central Valley Improvement Act as represented in the bill before us, H.R. 1906. Thank you, Mr. Chairman.

[The following statement was submitted for the record:]

STATEMENT OF HON. RICHARD W. POMBO, A U.S. REPRESENTATIVE FROM CALIFORNIA

Thank you, Mr. Chairman, for holding this hearing today on H.R. 1906, the Central Valley Project Reform Act of 1995 (CVPRA). I appreciate you providing this Subcommittee with the opportunity to review and discuss the CVP reform bill—of which I am an original cosponsor—and look forward to the testimony of our witnesses.

As you know, Mr. Chairman, P.L. 102–575—the Central Valley Project Improvement Act (CVPIA)—made a substantial number of changes to the implementation of California's major Federal reclamation project, the CVP. Among its major provisions, the CVPIA mandated that 800,000 acre feet of yield from the CVP be dedicated exclusively for fish and wildlife purposes. It also established the CVP restoration fund, mandated several specific construction activities designed to mitigate impacts on fish and wildlife, and required the Bureau of Reclamation to do a system-wide Environmental Impact Statement. These changes were in an effort to achieve the stated goal "to protect, restore and enhance fish and wildlife habitat within the Central Valley of California while maintaining the productivity of other project purposes."

It has now been over two years since Congress passed the CVPIA. In that time it has become abundantly clear that, as written, this law designed to "improve" the CVP is itself in need of improving. H.R. 1906—I firmly believe—is a sound legislative proposal designed to do just that—preserve the integrity of the CVPIA but achieve its goals in a more realistic and workable manner. Again, Mr. Chairman, I applaud your efforts in introducing this bill and will enthusiastically work to both improve it and move it through the legislative process.

I understand that a number of environmental organizations, and their supporters in Congress, are opposed to this measure. Undoubtedly, we will hear a great deal from them today and in the future as we debate this bill. Mr. Chairman, there they go again. I have heard from these groups that this proposal is an effort to repeal the critical features of the CVPIA. Nothing could be further from the truth. This bill disrupts neither the 800,000 acre feet set-aside for wildlife nor the efforts of the CVPIA to double the number of anadromous fish in California. Instead, it serves to streamline and clarify these requirements. Simply stated, it will make the CVPIA an all around more workable law.

It has been said that this proposal will derail the fragile Bay/Delta agreement of December 15, 1994. This is yet another falsehood. The fact of the matter is, this proposal is intended to be consistent with the environmental requirements under the Bay/Delta Accord. If adopted, this proposal will meet the environmental benefits more quickly and efficiently than the status quo.

Given that the environmental extremists have already filed a lawsuit against this historic agreement, maybe it is they who should ask themselves who is more likely to jeopardize the Bay/Delta agreement.

Mr. Chairman, those who claim that this legislation would eviscerate the CVPIA are dead wrong. The only thing divisive about this measure is the false rhetoric that is being tossed around in opposition to this well meaning proposal.

Again, I am proud to be in support of H.R. 1906 and look forward to today's testimony. Thank you.

Mr. DOOLITTLE. Thank you. We have some of our distinguished members as witnesses, and first on the list is the Honorable Bill Bradley, U.S. Senator. Senator Bradley.

STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM NEW JERSEY

Senator BRADLEY. Mr. Chairman, thank you very much. I appreciate the opportunity to come before the committee today and share my thoughts on H.R. 1906. As one of the authors of the Central Valley Improvement Act, I still retain a strong interest in all bills and regulations that affect the implementation of this Act, and I

maintain a regular oversight role and have dedicated a sizable amount of my own effort and staff resources as well as outside resources to oversee the implementation of this Act.

The CVPIA was enacted, as Congressman Miller has said, to modernize the Central Valley Project and produce a balanced project which yields benefits for agricultural users, for urban users, for the environment, for state and local government, for commercial and sport fishing, and for Native Americans.

But H.R. 1906 I think threatens to upset that careful balance by tilting the scales in the favor of agriculture and, unfortunately, reopening hostilities in what I came to learn over four or five years of very intense investigation, hearing from over 100 witnesses and official testimony, and hearing from hundreds of others in onfield trips as well as discussions in my own office, are the longstanding California water wars. And this bill endangers the fragile piece that was established with its passage in 1992 and the implementation of the Bay-Delta standards negotiated last December.

Mr. Chairman, before passage of the CVPIA in 1992, the Central Valley Project was a project in crisis. The way it functioned was a relic of an earlier era which emphasized delivery of irrigation water at the expense of other interests such as the water needs of urban dwellers or fish and wildlife.

The CVPIA helped resolve that crisis by promoting water conservation. I mean, if 85 percent of the water in California is used for agriculture, if you simply saved—conserved 10 percent, you would double the amount of water available for commercial and residential uses in the state.

So we tried to promote water conservation. We tried to promote voluntary water transfers to nonagricultural users to give them the right to do that and water for fish and wildlife. At the same time, the CVPIA continued to guarantee the vast majority of the water of the Central Valley Project for irrigated agriculture under 25-year contracts and continuing at subsidized rates.

It is interesting just to note parenthetically that the rough subsidy—the repayment is about 230 million on a $3.7 billion project which amounts to a 95 percent Federal subsidy. We might have nicked that down a point or two in 1992 but not much.

Mr. Chairman, I see no reason for changes in the CVPIA and that is my basic message today to the subcommittee. The Act is working, and it has worked in both wet and dry years. Yesterday's San Francisco Chronicle, for example, reports that California's salmon population has exploded this year to legendary proportions. And although this has been a very wet year, I believe a part of that story is attributable to the innovations contained in the CVPIA.

According to California waterfowl experts, the four Sacramento Valley wildlife refuges, allocated firm water supplies for the first time under this Act, experienced a 20 percent increase in waterfowl usage during the 1993–1994 water year over previous years.

Mr. Chairman, instead of rushing to change the CVPIA, the Congress needs to adopt a few of the old-time virtues starting with patience and cooperation. How can we begin unraveling a bill that is less than three years old which is still in a relatively early stage of implementation?

According to the Department of Interior, numerous rules and regulations implementing the statute remain to be finalized. Appropriately, the rulemaking process and not new legislation should be the forum for resolving concerns about the CVPIA. In fact, we will not even know if there are flaws in the CVPIA itself until the rulemaking is completed.

Patience is not the only virtue. Cooperation is the other. For example, cooperation is the key to the Bay-Delta Accord, agreed to last December, which has all the primary stakeholders on California water issues working together to solve the problems of the San Francisco Bay Estuary.

Mr. Chairman, that is the key, keeping all the parties around the table to work out the problems. The existence of the CVPIA was crucial to that success, and I think, unfortunately, H.R. 1906 would undermine the agreement even before it has been fully implemented.

Mr. Chairman, just two concluding comments. I am troubled by the fact that some members are attempting to take apart the 1992 Act piece by piece on other bills such as the attempt through the budget process to shut down the San Joaquin study before it reaches its conclusions on the feasibility of restoring the river.

And I understand who wants to have this done, and I understand its purpose, and I understand why it is being done. And I assure you that any legislative alteration to the CVPIA will receive very strict scrutiny when it comes to the U.S. Senate.

Finally, Mr. Chairman, H.R. 1906 is the wrong bill I think at the wrong time. It imperils the Bay-Delta agreement which gives us the chance to work out water issues at the state level, and, instead, Congress should be encouraging cooperative resolution for these difficult resource issues.

Revisiting CVPIA at this early stage, and, you know, I was a fundamental player, author, but no one's work is perfect, and I am not saying that at some point you might not want to look at it, but at this early stage, I think it sends exactly the wrong message to those who look to Congress for certainty, for fairness, and for good common sense. And I hope the committee would keep those views in mind as you deliberate.

I thank you for the opportunity. I have extensive comments on the specifics of the bill, but I felt in my limited time I would simply like to register and argue for patience and cooperation, keeping people around the table, not rushing in preemptively and reopening the water wars of California.

[Statement of Senator Bradley may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. The Chair's intent is to take each of the members, and then we will open it up for questions following the last member to testify. Mr. Herger from California is our next witness.

STATEMENT OF HON. WALLY HERGER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. HERGER. Thank you, Mr. Chairman and members, for the opportunity to testify before your committee on this very important legislation. Mr. Chairman, as you know, nearly two-thirds of our state's water in California originates in northern California. Shasta

and Whiskeytown Lakes in Shasta County and Trinity Lake in Trinity County are the primary sources of water that is utilized throughout the state for a variety of purposes including recreation, agriculture, fish and waterfowl habitat, industrial and municipal use, and hydroelectric power generation. The majority of this use takes place within the Central Valley Project.

Mr. Chairman, everyone in this chamber is painfully aware that California's water supply is often stretched to the very limits of its utility, particularly in drought years. We also realize that our water is subject to longstanding contractual and historical rights, some extending as far back as the last century, long before the Central Valley Project was built. In addition, we have an obligation to maintain stream flows in our rivers that would support viable fish populations.

Many of my constituents have expressed to me their concern that under current law recreational use of our streams and reservoirs are not given adequate priority or protection. My district is also emphatic that water use rights, specifically area-of-origin rights, be honored in this or any other legislation affecting North State water.

Furthermore, residents of Trinity County have a deep concern that the 340,000 acre feet floor established for the Trinity River under the CVPIA be maintained and that recommendations for future flow regimes established by the Secretary of Interior be given fair, apolitical treatment so that ongoing efforts to foster a viable salmon population in the river can continue.

It is imperative that we fully consider these concerns during our deliberations on this bill. Our final product must maximize efficiency, honor long-held water rights, and provide adequate protection for salmon populations in the Trinity River. In this regard, I wish to thank the Chairman and the committee for your ongoing assistance and cooperation in addressing these crucially important issues.

Several provisions in this bill improve the efficiency of the CVP, thereby helping to stabilize water levels in our North State reservoirs. For example, the bill clarifies the original intent of Congress that the 800,000 acre feet dedicated under CVPIA to environmental improvements be used both to meet ESA objectives and satisfy the requirements of the Bay-Delta agreement, thereby eliminating confusion which would result in unmandated water allocation which exceed the levels needed for responsible management of the environment.

The bill also maximizes the use of CVPIA water by requiring that portions of the 800,000 acre feet that have already served their environmental objectives be reused for other purposes. Furthermore, it improves the use of water for waterfowl habitat by requiring the Department of Interior to develop and implement improved management and conservation standards on wildlife refuges.

Finally, by continuing authorization for the temperature control device at Shasta Dam, it makes management of Shasta Lake for downstream temperatures more efficient. I also wish to acknowledge the committee's cooperation regarding the Trinity River provisions in the bill and express my great appreciation for the Chair-

man's commitment to address issues that the bill does not yet cover but which, as I have already indicated, are extremely important to those who I represent. These include area-of-origin rights and recreational uses. In my conversations with the Chairman, you have assured me that both these issues will be given utmost consideration by the committee.

In conclusion, I wish to thank the Chairman and the committee again for the great work you have done thus far on this bill. I look forward to working closely with you in the weeks ahead to complete our work and ultimately pass this legislation through the House. Mr. Chairman, in addition to my written remarks, I wish to submit for the record a number of statements prepared by county and local officials in my district. Thank you.

[Statements of officials may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Our next witness is Mr. Bill Thomas from California.

STATEMENT OF HON. WILLIAM M. THOMAS, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. THOMAS. Thank you very much, Mr. Chairman. I appreciate the opportunity to comment on H.R. 1906, and I would ask that my written testimony be made a part of the record in its entirety.

I appreciate the Senator from New Jersey's testimony based on his four or five years of involvement on this issue. I have been in California over 50 years. I have been in the San Joaquin Valley over 25 years. I have represented people in that area for over 16 years, and for the last eight months or so, I have been working with Central Valley Project water users trying to identify, develop solutions to problems that have arisen as a consequence of the so-called Central Valley Project Improvement Act of 1992. And I want to for just a couple of minutes shed some light on what H.R. 1906 is truly about and dispel some of the misinformation that is being circulated.

In contrast to the revisionist history one hears from certain interest groups and even members, the 1992 Act was not some widely accepted, wildly popular piece of legislation. It wasn't something that Californians had a significant amount of input in. The facts reveal a good deal of old-fashioned legislative arm twisting, as you might expect.

The 1992 Act had project authorizations galore. It had projects for states like Utah, Wyoming, Texas, Kansas, South Dakota. All of them had an interest in making sure that that bill passed because it was structured for that purpose. Indian water right disputes were resolved in that Act. The National Historic Preservation Act was amended by the bill. Who wants to vote against something like that?

The Central Valley Project Improvement Act of 1992 for California was squirreled away in the 34th title of a bill that few felt they had time to review. Remember, it was October 5, 1992. People wanted to get away, break that session, and go home for the election.

Also contrary to what you may hear from special interest groups outside the San Joaquin Valley, H.R. 1906 is not a travesty of the legislative process. The bill itself reflects the ideas and interests of

Central Valley Project contractors. It was not written by lobbyists, as some would assert, but by water users in the San Joaquin Valley who tried to include municipal water users and environmental groups in the process.

I know this to be a fact because my chief legislative assistant, Bob Winters, worked directly and personally for over six months on eight drafts of this legislation with water valley users and their representatives. In fact, I spent six months pushing the principals to work faster so we could reach this day today, Mr. Chairman. It is an odd situation when Members of Congress are faulted for actually asking the people affected by laws for ideas to make their life less complicated and the law more equitable.

Finally, I want to make it clear that at no time did the people who I worked with try to promote a repeal of the Central Valley Project Improvement Act of 1992. In fact, I made that a sine qua non of our discussions about changes. I am sure some folks want to try to turn back the clock, but that was not the direction of any discussions that we had with any of the principals involved. I don't think it is prudent, and I don't think it is necessary.

Everyone in the room needs to understand that the water users and the members who are supporting H.R. 1906 are not trying to reclaim the 800,000 acre feet of water the 1992 bill took from agriculture or to prevent other environmental improvements in the 1992 bill from continuing to be enacted. What we are all concerned about is the lack of clarity left behind by the 1992 law and some of the unnecessarily punitive things that it continues to permit.

For example, no one is certain of the amount of water the 1992 Act may ultimately strip from the farm community because a variety of ways to keep claiming water can be found under the text, making lenders reluctant to loan to a valley farm operation, although I must say based upon the change in the majority of Congress, we may have less reluctance if we can create some certainty.

But, frankly, if the people who were the authors and the majority at the time this bill was written were still in power, you would continue to have a real concern about the way in which all of these triggers that were embedded in the bill were going to be pulled.

For example, the Act requires the Bureau of Reclamation to keep studying restoration of anadromous fish runs in the San Joaquin River even though the Secretary of the Interior, Bruce Babbitt, himself has stated he does not view putting water back into the river to restore fish runs as reasonable or prudent.

For example, the Act provides for a series of short interim contracts while environmental reviews are conducted and, once the studies end, a guarantee of a single contract of no more than 25 years' length, making water supplies uncertain and, once again, discouraging capital from being made available to farmers in the valley.

In the 1992 law, instead of permitting the Secretary to choose to spend 100 percent of the funds from the restoration fund on fish screens and other projects authorized by the '92 Act, which would improve salmon and steelhead survival, the Secretary can only use 33 percent of the funds for these projects.

Now, H.R. 1906 was designed to address these kinds of problems in a way that is being intentionally misdescribed by individuals

and groups who want the water for their own goals. We are not denying the Secretary power to use restoration funds to buy water for projects, but we do think he should be able to use all the restoration money for projects including those specified in the 1992 bill or other purposes that get us the most environmental improvement for the dollar. We are not content to live with the suggestion that the San Joaquin River study ought to be completed because it is just a study. We know what Secretary Babbitt believes the outcome should be and see no reason to waste more money on a known outcome.

We are not cutting off water for wildlife refuges as represented. That is completely incorrect. What H.R. 1906, Mr. Chairman, does, as you well know, allows water supplies to refuges to be reduced by only 25 percent during droughts. Farmers are still subject to the law which allows Interior to cut their water supplies by as much as 100 percent.

Perhaps most important, we want to provide clear legislative guidance to the Department of Interior on the 1992 law because the legislative history and guidelines issued by the Bureau of Reclamation since 1992 are not clear. Congress should legislate clearly so we won't have to trust bureaucrats who are not elected by the people.

Mr. Chairman, I look forward to working with you on this legislation because, as you well know, it is crucial to California's future. Agriculture is the foundation on which my district is largely built. The only way farm families can continue to grow the crops that people want and provide the jobs that Central Valley residents need is to revise the 1992 law so that it provides water for wildlife without disrupting the lives of those who have worked, saved, and built on the economic promise the Central Valley Project represents. I believe very strongly, Mr. Chairman, that H.R. 1906 makes those kinds of revisions.

I want to thank the Chairman and other members of this committee, both Republicans and Democrats, for their leadership in producing what I think is an eminently reasonable compromise. It brings the pendulum back to the middle and hopefully will stop the pendulum swings dealing with California water. Thank you very much, Mr. Chairman.

Mr. DOOLITTLE. I thank the gentleman. Our next witness is Mr. Vic Fazio from California.

STATEMENT OF HON. VIC FAZIO, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. FAZIO. Mr. Chairman, I will try to be brief and to the point. First, let me thank you for having this hearing so we all have a chance to air our views on this measure and, frankly, on the underlying law it seeks to amend because I don't think we had enough input on the specifics of this legislation when it was passed in the last Congress.

By balancing all interests in a fair and unbiased fashion, the result of this effort can be I think a bill that is both credible and broadly supported, one that reinforces a commitment to the many objectives of the CVPIA; not in every instance, but to many of them.

First, I support this measure, and I want to clarify why I feel there is strong need for legislation to reform the CVPIA. The Administration admits there are problems with it. The issue is not whether or not to address them but how and when. It is clear to me that what Congress intended when it first passed this bill is not being adequately followed.

The Administration believes that many of these problems have the potential to be addressed within the Bureau of Reclamation without Congress having to take legislative action. They believe it is too early to begin tampering with a law that is two and a half years old.

My question to the Department of Interior is if they could have taken care of these problems administratively, why haven't they done so in the ample amount of time they have already been provided? My constituents who work with this law have simply lost patience.

There is no justification for not attempting to reach consensus on how the underlying problems in the CVPIA should be addressed. The time has come, and statutory language is needed to make sure that the intent of Congress is fully understood this time around. Nothing is to be gained by allowing any uncertainty to continue since it is generally acknowledged that clarity is needed on many points.

For example, the Administration's view is reflected in the Bay-Delta Accord, and the drafting of this bill are nearly identical in the accounting of the 800,000 acre feet of water to help the CVP meet the anadromous fish doubling goal. Why not end two and a half years of speculation and controversy and write it into law?

As someone who represents a great number of water users living under this uncertainty and who has made every effort to reach out to the Administration and to work out these issues of disagreement, I see no justification for allowing this situation to continue any longer. We have an opportunity to put the project on stable footing with the adoption of H.R. 1906.

I know some environmental groups are concerned that this reform bill will undermine the Bay-Delta Accord, and I think it is important as we go through this process to put this concern to rest. It is certainly not my intent or the intent I believe of the other cosponsors of this measure to jeopardize the integrity of this carefully crafted agreement.

The CVP has undergone greater scrutiny and been subjected to all sorts of special rules and requirements that no other Federal Bureau of Reclamation project has been required to comply with. From unique and confusing water conservation standards to complex water transfer requirements that actually have impeded logical transfers, to shorter and less secure contracts—the list goes on—we are creating complicated and uncertain environments both for agriculture, for water conservation, and any other broadened purposes of the CVPIA.

I think it is time to equalize the playing field so that all Californians benefit and know where they stand. This bill is a good first step to bringing these issues to the table, putting them through legislative review, and clarifying what improvements can and should be made to the improvement of the improvement Act.

What this reform action should not do is gut the Central Valley Project Improvement Act. It should make it workable. One way to do that is by bringing stability to contract renewals which have been even more difficult for growers, making it harder for them to plan for future crop production and infrastructure payments. As recent experience has taught us, conflict over contract renewals has created a distrust of the government's intention in fairly implementing the CVPIA.

I am most particularly concerned also that we recognize the special water right status of the Sacramento River water settlement contracts, those with prior riparian rights before Shasta Dam was built. I worked very hard to ensure that their concerns were addressed in the original CVPIA, but those concerns have not been respected by the Federal agencies. Without a doubt, it must be made clear that these contracts do not, and I repeat, do not come under the jurisdiction of this measure. That was never my understanding during negotiations on the CVPIA, and we need to remove any ambiguity over the intent.

Mr. Chairman, one area that has not been addressed thus far in the bill is the matter of area of origin. I know you have an interest in this as well, and I look forward to working with you and the subcommittee generally to advance the basic precept.

As you know, from the time the Federal Government assumed responsibility for constructing the CVP, assurances were repeatedly made to water users in the Sacramento Valley where the vast majority of the CVP water originates. Their needs would not be sacrificed to the needs of other water users elsewhere. That was the basic precept that everyone understood when the CVP was authorized.

On October 12, 1948, for example, the Secretary of the Interior, J.A. Krug, substantiated former statements of Federal policy on the issue of area of origin in a speech in Oroville, California. He said, "Let me state clearly and finally, the Interior Department is fully and completely committed to the policy that no water which is needed in the Sacramento Valley will be sent out of it."

The purpose of the CVP contemplated the export of only surplus water from the Sacramento Valley. On this point, there is no question. I hope this committee will not miss an opportunity to confirm this concept that was included in state law and yet only referenced in legislative debate when the CVP became a Federal project during the Depression.

And I note that the CVP power users are not on the witness list today, and I think they need to be part of this process. Power users have paid 30 percent, more than their targeted contribution to the restoration fund. In addition, some provisions of the bill before us would reduce costs for water users and shift additional costs to power. These issues are important and need to be addressed, and the power users need to be at the table to help us do that.

Mr. Chairman, I appreciate the opportunity to testify today. I commend you for holding these hearings and for beginning this process to see the problems with the CVPIA resolved once and for all so that we can go forward in the common knowledge of what this law was intended to do with the sort of balance and, impor-

tantly, certainty that can guide all our activities in pursuit of Federal law.

Mr. DOOLITTLE. I thank the gentleman. I thank the witnesses. Does any member of this subcommittee wish to address questions to our witnesses? The gentleman, Mr. Radanovich, is recognized.

Mr. RADANOVICH. Thank you, Mr. Chairman. Actually, I did want to direct some questions but not to my colleagues, Mr. Fazio and Mr. Herger. It is unfortunate that Mr. Bradley is not in the room right now but——

Mr. DOOLITTLE. He made a signal. Maybe it wasn't clear whether he intended to—he is coming back. If you want to hold or ask other questions, perhaps you will have a chance to talk to him at that time.

Mr. RADANOVICH. I am going to hold my time then. Thank you.

Mr. DOOLITTLE. OK. Mr. Ensign.

Mr. ENSIGN. Thank you, Mr. Chairman. It is just real brief. Both of you are from California, and my question is very simple. You represent the people that elected you to office. You seem to know your districts well and the needs out there. How do you feel about somebody from New Jersey, other places in the country basically trying to come in and tell you what is best for your state? Shouldn't the people that elected you, that put their faith in you to know what is best for your state.

Mr. HERGER. I thank you for the question, Mr. Ensign. I suppose we feel about the same way you do when a mining legislation comes up as it did yesterday afternoon from, again, individuals from the East. I believe this is a tragedy that we see happening over and over again in this. It is not just a so-called, it is a war on the West, whether it be on our water, on our grazing, on mining, whatever it is. It is a tragedy that hopefully this Congress is in the process of correcting, and this legislation goes toward that I believe.

Mr. ENSIGN. And I think it gets to a deeper issue. We have a representative form of government. Part of what Congress is about is bringing people here that were elected by their districts. This is not interstate. This is all in California, and it would seem to me that the responsibility of the rest of us is to listen to the representatives that represent those districts that are only being affected. And New Jersey is certainly not being affected by this, and we should listen to what the best recommendations are from those representatives. Thank you, Mr. Chairman.

Mr. MILLER. Mr. Chairman?

Mr. DOOLITTLE. Yes. Mr. Miller is recognized.

Mr. MILLER. Well, the gentleman from Nevada raises an interesting point, and I am sure that people in Arizona when Nevada and Las Vegas try to explain to them how they should give up their water and sell it to Nevada will be very interested in having the people from Arizona only——

Mr. ENSIGN. Will the gentleman yield?

Mr. MILLER [continuing]. making that—I will yield at the end—making that decision. The people from New Jersey and every state in the Union are affected by this because we put $3.5 billion of their taxpayers' money into it, and at a time when we are looking to reduce subsidies and to reduce the obligations of the Federal

Government, this was a very key component, as were the taxpayers of all of California involved in this since they paid for it.

Mr. Fazio has pointed out the power users in our state and other states pay for this project, and, in fact, there was a very, very substantial support within the state. We don't get to do things district by district. There has been a lot of discussion over the last couple of days about the agriculture bill and how urban people should join in to help in the Marketing Promotion Board so that the farmers can sell their crops overseas. Urban people here are asking for some help in protecting the environment, protecting the Bay-Delta system because that is where their residents spend their time, use, and earn a living.

Now, that is the process. It is just untenable to suggest that every district would have the veto over anything they did. You know, the New York Stock Exchange is located in New York, but with all due respect, people in all 50 states use the stock exchange and expect to have protections, expect to have timely business.

And so that is why this is, and the fact is that the business community, a good portion of the agriculture community, the environmental community, the urban community of California supported this legislation and pleaded—the major lenders to agriculture pleaded with the President of the United States, a Republican at that time, Mr. Bush, to sign this legislation because this was good for the state.

Mr. Thomas may have troubles with it. Mr. Herger may have troubles. Mr. Dooley may have troubles with it. But the fact was the consensus was that this was good for the state. There was not the consensus in the Central Valley, but California is larger than the Central Valley. And we will find that we will make decisions on the Utah wilderness area, we will make decisions on the Grand Canyon, we will make decisions on Yellowstone, on the Everglades, on our coastal line that are used and in some cases belong to all the people of this country, and we are not going to let the Congressmen from Utah or from San Francisco veto what is national legislation and national interest.

Now, if these people want to finance this project all on their own and they want to take it over, hey, go get them, tigers. Just give us back what the people from New Jersey invested in this, and the people from northern California, and the people from Nevada, and the people from Idaho, and Florida. They have put up the $3 billion. Give them back the interest subsidies, and I guess we will call it square.

But that is not what they were thinking. They were asking the people of New Jersey for their vote to start this project 50 years ago. They were asking the vote from Nevada to start this project. So, you know, that is the nature of a national legislature.

Mr. ENSIGN. Would you yield now?

Mr. MILLER. Yes. I would be happy to yield.

Mr. ENSIGN. The first point you brought up was obviously the Arizona-Nevada project, and that is interstate, and that is where the states have to work together. But at the same time, if Nevada and Arizona come up with an agreement, I would hope that the rest of the states would be willing to support that agreement.

The second thing is we are getting——

Mr. MILLER. Well, you have to include California in that.

Mr. ENSIGN. Yes, absolutely.

Mr. MILLER. And Colorado.

Mr. ENSIGN. And the states that are affected by that. Absolutely.

Mr. MILLER. Right.

Mr. ENSIGN. But at the same time——

Mr. MILLER. And the taxpayers of the country. They don't give away their vote.

Mr. ENSIGN. We need to be stewards. No question. We need to be stewards of the taxpayer dollars, but I think you bring up a very good point and that is the more we can get it back to the states, the better off we will all be, and that includes the tax dollars and everything else. The less Federal control, I think we will all be a lot better off. Thank you.

Mr. MILLER. Yes. I appreciate now that people have the project, they have the interest-free loans for 35 years, and they have the subsidies, and they have the valuable land, they are saying, "Let us call the deal off. Let us control it." This project serves the entire State of California and has——

Mr. RADANOVICH. Will the gentleman yield?

Mr. MILLER. One second.

Mr. RADANOVICH. Thank you.

Mr. MILLER. And has implications for the entire state. That is what we have learned in the Central Valley Improvement Act. That is what we learned in Bay-Delta. Nobody could be left out, and nobody could opt out because given our situation in California now, you must, in fact, participate because water usage in the state is changing. The economics of the state is changing. The economy of the state is changing, and the growth of the state has continued, and that is why all water implicates everyone else in every other region. Yes, I yield to the gentleman.

Mr. RADANOVICH. Thank you, Mr. Miller. I guess, you know, I am sitting here with my colleagues, Mr. Chairman Doolittle, Mr. Dooley, Mr. Fazio, and Mr. Thomas who was here, and also Mr. Herger, who represent the area that the CVP operates in, and I——

Mr. MILLER. No, I do too. See——

Mr. RADANOVICH. Well, not necessarily.

Mr. MILLER. No. I do. I have 90,000 people on a contract, and I represent the delta.

Mr. RADANOVICH. That is fine but you don't——

Mr. MILLER. Directly implicated.

Mr. RADANOVICH. You don't represent agriculture in that district, and I will make that point. What I am trying to say is that you are viewed as an outsider who is coming into the valley trying to tell——

Mr. MILLER. Well, excuse me.

Mr. RADANOVICH. No. Just let me make this point. You are viewed as an outsider coming in——

Mr. MILLER. I have lived in the state 25 years——

Mr. RADANOVICH. Will the gentleman yield? I believe I have got the time. I would like the courtesy of making a point, sir.

Mr. MILLER. Yes.

Mr. RADANOVICH. And that is that you are viewed as an outsider coming in trying to tell agriculture what is best for agriculture without the benefit of listening. What you are also doing is coming from an area——

Mr. MILLER. Let me reclaim my time, Mr. Chairman.

Mr. RADANOVICH. No, not right now because what I want to mention is Hetch Hetchy.

Mr. MILLER. I want to reclaim my time, Mr. Chairman.

Mr. RADANOVICH. The Hetch Hetchy——

Mr. DOOLITTLE. The time belongs to Mr. Miller.

Mr. RADANOVICH [continuing]. area up there is providing 30—you are paying $30,000 for water——

Mr. MILLER. Mr. Chairman——

Mr. RADANOVICH [continuing]. coming out of the Hetch Hetchy Valley which is comparable to the Yosemite Valley, and my statement to you, Mr. Miller, is——

Mr. DOOLITTLE. The time does belong to the gentleman.

Mr. RADANOVICH [continuing]. clean up your own backyard before you come into my valley and try to tell my ag fellows how to farm and what is right on water policy in California. Clean up your own backyard first.

Mr. MILLER. Mr. Chairman, can I claim my time?

Mr. RADANOVICH. May we be excused?

Mr. MILLER. Mr. Chairman, I want to reclaim the time the gentleman took from me.

Mr. DOOLITTLE. Mr. Miller asks for unanimous consent to have 30 extra seconds, and just before you go, may I suggest following this exchange that we try and direct our comments to the witnesses because we will have plenty of opportunity to air these issues. Mr. Miller.

Mr. MILLER. Well, I really resent the fact that as an elected official from California I am viewed as an outsider. This is about the state——

Mr. RADANOVICH. You certainly are. When you attack agriculture, sir, you are viewed as an outsider to the San Joaquin Valley.

Mr. DOOLITTLE. The gentleman does have the time.

Mr. RADANOVICH. Then if he is going to attack me, I request a response then.

Mr. MILLER. You have got five minutes coming. You can talk until hell freezes over.

Mr. RADANOVICH. Sir, fire away then.

Mr. MILLER. The fact of the matter is that my constituents are under contract with the Central Valley Project—I think the first urban contract with the Central Valley Project. The fact is that water diversions for the benefit of agriculture out of the delta—see, there is no natural leak in the delta. It goes to the Pacific Ocean. We put a pipe in. We sent you a couple of million acre feet of water. The people of the State of California decided to do that. This nation decided to do that.

That all has impact on the livelihoods, on the recreation, on the lifestyle, on the standard of living of millions of people in the San Francisco Bay area—of millions of people in the San Francisco Bay area. So to suggest that somehow that they should be bystanders

while you continue to carve up the Treasury and carve up the water of the state is an outrage.

Mr. DOOLITTLE. All right. Mr. Farr would like to be recognized and is recognized.

Mr. FARR. Well, thank you very much, Mr. Chairman. I am probably the only Californian sitting on this committee that doesn't have a major vested interest in the water from the CVPIA. But I do represent a coastline, and it is interesting how the coastal communities of California are also dependent on this because we have a major fishing industry in California, and that fishing industry—the salmon industry—depends on the water quality and the water availability also of these same rivers.

So there is multiple economic users of this water, and I think that one of the things that we want to try to do is make sure that it is sort of best management practices for everybody as expressed in the Bay-Delta Accord. And my question really goes to Congressman Fazio, and I think you expressed it.

And, Mr. Chairman, I was a little bit concerned because in your opening remarks you indicated that our hearings indicated everyone indicated it was not working. That is not what I heard. I heard what you expressed when you introduced the bill. It says that we have heard from those who expressed concerns about the way certain provisions of the CVPIA are being implemented and interpreted, and that some provisions of the CVPIA need modification.

I am reading from your statement that is in the record here. And that we ought to use this bill to build on the Bay-Delta Accord. And my question to Congressman Fazio is that I think you reflected in your comments that the whole thing isn't broken and doesn't need to be thrown out, that you need some——

Mr. FAZIO. I don't think anybody here, Sam, thinks this thing needs to be thrown out. There are people who are indicating that that is our intent, those of us who support reforming the CVPIA. That is not the bottom line here. What we are trying to do, having worked with the law for two and a half years, is to make the changes that reflect in some cases what we understood to be legislative intent, and in other cases react to problems that have developed from the first couple of years of administration of the law.

There is no question that the Bay-Delta Accord is something that no one here is trying to destabilize. It was a hard-fought compromise, state-Federal, north-south, east-west, and we want to make sure that the concepts that are included in that guide us in the future. I don't think there is any attempt to throw that out, but there is so much misinformation, so much arguing past each other on these issues, like the disposition of the 800,000 acre feet, that we have got to come to some resolution. And we have got to write into law clarification, and that is why I think these hearings are necessary.

As I indicated earlier, a lot of things that happened in the last round were not handled in the formal process, and a lot of things I think were interpreted differently by people. And now the rubber hits the road, and we have got to clarify that. I think this is probably an opportunity to hear some things that were never put on the record in the process of passing the bill in the last Congress.

Mr. FARR. I am in agreement with that statement, and I would just caution the committee members that are not from California that there are other vested interests that are going to be here today. We have people—Jeff Kerry is on the panel too from the Grasslands Water District which is in the Central Valley. They are very concerned about the way the legislation is being implemented; Roger Thomas from the Golden Gate Fishermen's Association.

You know, we are having a record year of salmon fishing in California. I mean, it is absolutely phenomenal. Fish are literally jumping on the boats, and a lot of the credit to that is the way our fish management practices have been handled in California. So water is very important to all of these economic interests.

This bill is very important. It is important to me because we receive in one of my districts in one of my counties a small portion, only 19,000 acre feet, but that is not a major vested interest compared to the rest of the people on this panel, but we do receive some water. So I am looking forward, Mr. Chairman, to working on trying to find a solution that will be a win-win for everyone.

Mr. DOOLITTLE. Thank you. Mr. Radanovich has asked to be recognized now that Senator Bradley is back. And before the Chair recognizes him, I just want to point out that to the extent possible we ought to expedite these questions because we have got three panels with 10 witnesses, and we haven't gotten to them yet. So there is going to be plenty of time to get into the nitty-gritty of this with that, however, and any member who wants to still ask questions—I will get Mr. Dooley on the list, OK—may do so now. Mr. Radanovich is recognized.

Mr. RADANOVICH. Thank you, Mr. Chairman, and welcome, Senator Bradley, as well Mr. Herger and Mr. Fazio. I do want to say in part that I think I have to thank the 1992 piece of legislation, the CVPIA, because that is in part why I am here today. It was passed over the objections of my predecessor and affected him dearly in his reelection bid.

And the only reason why I want to bring this up is because, again, acknowledging Mr. Fazio and Mr. Herger, Mr. Dooley, Mr. Doolittle—those are the people—Mr. Pombo—those that live in the district where the CVP is. I believe the main flaw in CVPIA has been its failure to acknowledge the fact that it was a piece of legislation, in my view, that was foisted from the outside over the objection of the people that used it.

And what I would like to see in this process is along with making the state water project an environmentally responsible project, making sure that there is water allocated to the environment, not at the expense of the security of agriculture in the State of California. That is all that anybody who is representing the reforms in the CVPIA are after is the ability to have some security in the interest in the San Joaquin Valley.

And, Senator, you made a couple of statements or one statement about making sure that we have patience and cooperation during this process. And in that vein, I would like to invite you to come and talk to the people that I represent that live and breathe water in the San Joaquin Valley who need to use the water in order to survive and discuss issues like the 800,000 acre foot allocation and this study on the San Joaquin River. Because I think, unfortu-

nately, there was not enough attention paid to the needs of agriculture in this bill, and that is simply what these reforms do. Mr. Miller, nobody wants to gut this bill. Nobody wants to trash the Bay-Delta agreement. Nobody including farmers in the San Joaquin Valley want to destroy that.

Now, I couldn't have said this probably 30 years ago when environmentalists would raise issues and farmers would say, frankly, "Go to hell," because they didn't have to listen to you. But the environmental movement has done good things over the last 20 years to raise the consciousness of those that are using the environment or resources in order to make a living.

But that doesn't apply today. We want to do the good thing. This bill, CVPIA 1992, threatens agriculture in the San Joaquin Valley, and what we are trying to do is make adjustments to the bill so that people can live and farm in the San Joaquin Valley, and that is all I have got to say.

Mr. DOOLITTLE. Thank you. Mr. Dooley is recognized.

Mr. DOOLEY. Thank you, Mr. Chairman. I am not a fisheries biologist by any means, but I find it almost humorous with the comments by Mr. Farr and Senator Bradley, who are attributing the record salmon catches this year to the reform of the CVPIA that was passed two years ago. It is my understanding that you don't catch a salmon until about five years after it is spawned in the river, and so perhaps this is almost a recognition that maybe we weren't doing things all that poorly before the CVPIA was put in place.

Mr. DOOLITTLE. Maybe we should just give Mother Nature some credit for a good, wet year.

Senator BRADLEY. It is a little bit like the confidence that Congressman Thomas said was restored when the Congress changed.

Mr. DOOLEY. Yes. That is right.

Senator BRADLEY. The contracts weren't bankable, but when Congress changed——

Mr. DOOLEY. Right. I guess the other thing I would like to just touch on is Mr. Miller's comments that the legislation represented a consensus. Many of us would contend that was somewhat of an overstatement, but what we are looking at in the Central Valley Project Reform Act today is trying to find a consensus in terms of what are the appropriate reforms to make in the legislation that passed a couple of years ago.

And I guess the characterization that this bill is being brought to the Congress by sinister forces almost, well, I certainly take exception to that. I think Mr. Fazio and Mr. Doolittle do too, and what I think we are trying to do is to find a way to address some of the inadequacies in the bill.

We are going to hear testimony from not only ag contractors but from urban contractors and even from the Bureau of Reclamation. All are going to identify provisions in the 1992 law that need to be addressed. Some of them are going to argue that they ought to be addressed administratively, and some are going to argue that they need to be addressed legislatively. But in every instance, the one thing that you cannot escape is that various interests are acknowledging that there is a need for some changes.

And, Senator Bradley, I just want to point out that if you do not have time to listen to the urban witnesses—who represent a variety of urban water districts including Alameda County, the City and County of San Francisco, the East Bay Metropolitan Water District, and the Santa Clara Valley—you should at least know that they went through point by point.

And you will find that there is a great deal of support and commonality between what we are asking for and what they are agreeing to. They agree in concept that there needs to be clarification on the use of the 800,000 acre feet. And that is what we are trying to do. They agree that there needs to be modifications in the water transfer provisions because they, quite clearly, aren't working now. They are not opposing those provisions.

They agree that there needs to be changes in the tiered pricing because that is not working. And they agree that there needs to be modifications to the contracts to provide for greater certainty. They also agree that there needs to be some consideration given to the reforms in the Trinity River provisions. I mean, this is not just agriculture contractors that are bringing forth a piece of legislation that is trying to unravel the beneficial provisions of the Central Valley Project Improvement Act. We think that we are trying to move forward in a very responsible way, and I would hope that the characterization of this legislation would not be such that it doesn't recognize the good faith effort that has been put forth.

Mr. DOOLITTLE. Thank you. Mrs. Chenoweth is recognized.

Mrs. CHENOWETH. Thank you, Mr. Chairman. I will have to agree with the gentleman, Mr. Miller, from California when he made the statement that the people in California don't own the New York Stock Exchange. But by the same tone, the people in New York did not own California water. The people in California or the state owned California water.

And what happened with the CVPIA was the Federal Government took 800,000 acre feet, and I think California was very generous. And if you will check the Supreme Court Decisions and your law, you will find out that is correct. And so that analogy simply does not hold up.

I also found it interesting that the reclamation projects have been referred to as government subsidies because in this case the irrigators have been paying back on their projects, and I would hope that I could hear from the gentleman from California the same argument when the bill on the Presidio comes up, when the taxpayers from all over this nation is going to be paying $25 million a year plus guaranteeing a lot of loans. So I just would challenge the gentleman from California to be consistent.

I think that there is a great consensus here in this bill. I am very proud of the members from California on both sides of the aisle. I do have a question for Mr. Fazio. You did state that Secretary Krug said—oh, Mr. Fazio left. Well, let me ask——

Senator BRADLEY. I will be glad to give his answer if you would like.

Mrs. CHENOWETH. I didn't mean to chase him away. Well, let me ask the Senator then.

Senator BRADLEY. But don't take me seriously.

Mrs. CHENOWETH. Let me ask Mr. Herger, and if you can answer this, I am sure you can. Mr. Fazio stated that Secretary Krug said the purpose of the Central Valley Project contemplated the export of only surplus water from the Sacramento Valley. Can you tell me if in California law if instream flows for flow augmentation for salmon purposes is that of beneficial use stated in law?

Mr. HERGER. I don't know if I have an answer to that. I mean, we have been doing a lot of legislation. I don't think there is in California law. Our longtime—just since you brought this issue up, this has been a—I represent an area where probably most of the two-thirds of the rainfall and precipitation that in California falls, and our concern has been a long one which is somewhat different than some of those others that are represented here.

The concern is that we have our basic water needs met first. That is something that we are trying—we are working with the Chairman to at least have this addressed as it is not adequately addressed at this time. But we do recognize the general needs of our state and of the San Joaquin Valley and the rest of the Sacramento Valley, and we just want to work on this very fine balance that we are attempting to establish. And that is why we want to reform this legislation which we feel this balance is not there now.

Mr. FARR. Would the gentlewoman yield on that question?

Mr. HERGER. Part of that balance is the fish issue obviously.

Mrs. CHENOWETH. Yes. I will yield.

Mr. FARR. The California constitution is the only constitution in the country that gives the right for fish and wildlife to the people of California. So it is a constitutional right that we have in California.

Mrs. CHENOWETH. The constitution in California allows for the fish and wildlife to be managed by your——

Mr. FARR. The constitution sets up that the fish and wildlife of the state belong to the people of the State of California and set up in the constitution the California Fish and Game Commission.

Mrs. CHENOWETH. Yes, sir, it did but it did not establish instream flow as a beneficial use, and my only question is, Mr. Chairman, Mr. Herger, that unless it is very clear in California law that this is a beneficial use, then the 800,000 acre volume could be considered, all of it, surplus water. I just want to flag that problem.

Mr. DOOLITTLE. If the gentlelady will yield, the Chair would suggest one of the witnesses coming along will get you an answer, but today you will have a water attorney in the final panel who may be able to give you the answer right away to that.

Mrs. CHENOWETH. And I see that my time is almost up, but I can tell you the people of California are being extremely generous. I don't think we would be this generous in Idaho. So my hat is off to you. Thank you.

Mr. DOOLITTLE. Thank you. Mr. Cooley is recognized.

Mr. COOLEY. Mr. Chairman, being from Oregon's 2nd Congressional District, we trickle a little bit into the system since you do pull water out of our Klamath County Lower Basin into California. We have a vested interest in watching this process because we too are having the same problem in our state.

I applaud you for your effort, and I think that if this goes through the way we hope it does, we can use this as an example

in getting the Bureau of Reclamation to take a good look at priorities and other issues.

The water of Oregon in the constitution is dedicated to all the people of Oregon, and so we do have a vested interest in what is coming out of Oregon into your system and are very, very concerned about this issue.

We are being forced by the Bureau to release an overabundance of water into the system, and it is creating a hardship on our agricultural community in the southern part of my district because of the Bureau's actions.

We are trying to circumvent those, and we have not been able to. We are forced to do more than historical runs in the process and hopefully that will come to some conclusion in this process which will help us in the future. I want to thank the committee for bringing this up. It makes California such a big area, and with so many individuals concerned, it will help us a great deal.

Mr. DOOLITTLE. Thank you. Are there further questions of the members of Congress who have appeared to testify? If not, we will excuse you and thank you very much for appearing today.

Senator BRADLEY. Mr. Chairman——

Mr. DOOLITTLE. Senator Bradley.

Senator BRADLEY [continuing]. since I went over and voted and came all the way back in anticipation of some heavy grilling, but let me if I could just make just a few comments and then leave if that is OK; try to respond quickly to some of the points that have been raised because I think some of the points that have been raised are important points.

The first thing I want to say is that in my relationship with you, Mr. Chairman, and with Mr. Dooley and with other members who were formerly from the Central Valley has always been of the highest quality. I think you have done an extremely aggressive and outstanding job of representing the interests of the constituents that you are seeking to represent.

I know that agriculture is a very sizable part of your constituency, and I believe that there has been—you in no way could be faulted for trying to represent those interests. The whole thrust though of the Central Valley Improvement Act was to say is water from the Central Valley Project only for agricultural interests? And I think the fundamental thrust was, no, it is not. It should be available for urban users if a landowner wants to make that sale, and it should be available for fish and wildlife.

One of the things in the Act that troubles me, and I don't know what the position of the Metropolitan Water District will be or any of the other water districts that are outside of the Central Valley Project itself, is the section of the bill that allows essentially a water district to deny a landowner the right to sell his water to whomever he chooses.

Under the Central Valley Improvement Act, we said that the right of first refusal for any water sale should go to anyone in the district. And, second, that no more than, I think, 20 percent of the water could be sold to any one water district. But we did preserve the opportunity for landowners to sell their water rights essentially to urban districts.

And the reason this is not unrelated—I am sorry that the Congressman from Nevada left—but the reason it is unrelated to broader issues is to the extent the Metropolitan Water District or other highly populated areas of California cannot get water, the inevitable pressure will build to alter the Colorado Basin Compact that directly affects Nevada as well as other Colorado Basin states.

And even the representation of Nevada Senators are interested in maybe moving a little from Arizona to Las Vegas even as we speak, and my guess is that to the extent that this Act is altered and access to some water from willing landowners who choose to sell to urban districts is prevented, it will simply hasten the day when both—I don't know if it will get to be the Upper Basin states, Mr. Cooley, but certainly the Lower Basin states—will be very concerned about the pressure that will build for that water.

In answer to the gentlelady from Idaho in terms of taxpayer dollars, roughly in present value the Central Valley Project is about 3.7 billion. By 2030, as a result of the power charges and the water charges, $230 million will be repaid of that.

So, you know, when we started the reclamation projects many, many, many years ago, it was supposed to be repayment in 20 years. Then we went to 40 years. Well, this will be 70 years after the project was completed, and there will have been a repayment of basically five percent. And it is all in the eye of beholders to how much people are being charged.

On the issue of tiered pricing, I would say simply that, you know, I visited a few grapefruit growers down in San Diego County. They are paying 4 or $500 an acre foot for their water, and they are operating very efficient operations; little plastic tubes that go right to the roots. The water goes right in. Meanwhile, you know, in the Valley, it is a little different than that.

And I think that if there was a more concerted effort to allow price to determine conservation measures that the effort would be made, and maybe we could solve some of this by accommodating everybody. At least we don't know if we cannot do that now because as Congressman Dooley reiterated, the Act really hasn't had a chance to work.

So I would urge you please don't act precipitously. Keep people around the table. Allow the Act to try to work and know that as, you know, one Senator who has an interest in this, I will continue to keep a very close eye on this from the Senate side. So, Mr. Chairman, I welcome the opportunity to come and testify, and I am sorry that I wanted to say just a few things, but, you know, I got hot walking over, and I needed a chance to cool off.

Mr. DOOLITTLE. Senator, thank you. As the author of the bill, I hope that——

Mr. POMBO. Mr. Chairman, before you excuse the Senator and since he came all the way back and wanted some hot questioning——

Mr. DOOLITTLE. Well, hang on a second then. We will get you in line because we have got two others who want to go. We are not going to excuse him right now. He provoked further questioning. I just want to say to you that we believe in water transfers, and we believe the bill needs to be changed in order to allow that to occur.

That provision is not designed to inhibit it. It is designed to further it, and I don't think now is the time to get into an elaborate explanation of that. But please don't believe everything our critics say without at least looking at what we are trying to do, and you evaluate it for yourself. And with that, I am going to recognize Mr. Dooley and then Mr. Miller and then Mr. Pombo.

Mr. DOOLEY. Senator Bradley, I have the highest respect for your knowledge and understanding of our issues. You obviously have done a lot of work, especially for being outside of the area. But I guess the opportunity that I want to take now really is to dispel some of the notions that this is a bill that is trying to unravel the CVPIA.

I don't think it can be characterized as that, and it is, in fact, a good faith effort to deal with some problems because if you really look at what we are doing, we are still maintaining our commitment on the 800,000 acre feet. We are maintaining our commitment to provide for the $30 million in the restoration fund. We are maintaining our commitment to try to provide for and facilitate transfers. Really, on the basic components, there is no backing away from any of those. We are trying to get at some of the modifications that need to be made in order to accomplish those other things.

And I want to specifically address one issue concerning tiered pricing because I think that this year is one of the best examples of why there needs to be some modifications. When we have tremendous rainfall and snowpack like we had this year, and when we have the opportunity for water districts in the San Joaquin Valley to recharge their aquifers, that last acre foot is the acre foot that is doing the most for conservation. You know, it is the one that is going back to recharge our aquifers that has been depleted.

If you have a tiered pricing system that is in place as it was prescribed in the legislation, you actually have a reverse incentive for that conservation practice. And this is a good example of why there needs to be some accommodations. Maybe on this issue, it doesn't have to be fixed legislatively, but somehow we have to have a recognition that there needs to be some administrative changes so when we have these opportunities they are not thwarted by misguided policy.

I think that is that same type of approach that many of us think is embodied throughout our bill, that we are trying to find a way to make some changes. And some of our critics out there are trying to represent that we are walking away from the Bay-Delta agreement. But the Bay-Delta agreement is one of the most important agreements, from the ag perspective as well as the urban perspective, in the State of California. Nobody wants to jeopardize that. We simply need an agreement that goes beyond three years, and that is the life span of the Bay-Delta Accord. We need to find a way to build upon that, and we think with some modifications, this is going to be very consistent with what was in that.

Mr. DOOLITTLE. We will call on Mr. Pombo.

Mr. POMBO. I wanted George to go first. Well, Senator, I probably am in one of the most unique positions of any member of Congress in terms of water because of my district. My district has CVP water. I have urban users. I have agricultural users. I have envi-

ronmental users in my district. I represent the other side of the delta from where George is.

I also have a fishing interest in my district. I also have what is considered northern California water in my district. I also have part of my district that is very heavily dependent upon water wells for irrigation and for urban users. So my district probably represents just about everything there is in California in terms of water.

You make the statement about the $500 an acre foot farmers down in southern California. The biggest pressure in the world on those guys to develop their property is $500 an acre foot water. And I have had people from the environmental community stream through my office over the past two years and talk to me about preserving our farmland and preserving the open space and how important that is for California and for the quality of life of California. And yet at the same token, they want to do things that force the increase in the price of water which the economic result of that being development of more farmland.

And you can't have it both ways. You can't maintain agriculture in California which is the number 1 industry in California, the biggest employer, the most money that comes into California—you can't maintain that at the same time you are trying to put the guys out of business. It is impossible.

The other side of that is you made the statement about the plastic tubes that take water down to the roots. I would invite you to come back to the Central Valley of California today and look at what we are doing today as a result of the drought and as a result of the CVPIA, and as a result of increased water costs.

It is very common today for us to have tube irrigation systems in all of our permanent crops. It is not an oddity. It is not something that they are only doing in southern California with $500 an acre foot water. It is a reality that we face today in agriculture in California. You rarely see flood irrigation in California anymore, at least in my part of the world. It is extremely rare today.

It is causing other problems. Before when we had flood irrigation, we would leach the salts out of the field. We did not have the kind of salt buildup that we are having today in the fields. I had a guy come in to see me a couple of weeks ago that said that they have noticed that at the end of their fields they are all of a sudden having dramatic drops in production because they don't let the water run out anymore because they keep it in the field. And the guys downstream from them who previously had used that water for irrigation don't have it anymore.

I mean, what we are trying to do with this bill is to go back in and try to fix some of the unintended consequences that we think happened by that. And we are trying to listen to all sides in this debate and trying to accommodate everyone knowing that not everyone is going to get what they wanted.

And at times it is extremely frustrating to have some of the stuff that has been put out about this bill that says we are trying to gut the CVPIA, that we are trying to undo the Bay-Delta Accord because it would have been easy for us to do that. We could have put out a bill that just, quite frankly, repealed the CVPIA from the very beginning, but we did not do that. We tried to go in and fix

the problems that we saw with the bill, and the criticism would have been the same if we had tried to repeal the CVPIA.

So, you know, I welcome you to work with us to try to fix these problems that exist, but in order to do that, you are going to have to hear the other side of it, and you are going to have to hear some of the things that my farmers say. You know, George and Cal and I are all farmers from the Central Valley, and we have some experience with what this has done. And I would be more than happy to tell you what this is doing to my district. Thank you.

Mr. DOOLITTLE. Thank you. Mr. Miller is recognized.

Mr. MILLER. Senator Bradley was nice enough to take the time to come over, and he wasn't in the room when I spoke, and I wanted to thank him very much.

Senator BRADLEY. I understood you defended me, and I appreciate that very much. You might have told them since they didn't know about a New Jersey Senator doing something about California, and he chastised California for having that New Jersey Senator do something. I am talking about the Pyramid Lake-Piute Settlement Act which is part of his district——

Mr. MILLER. Senator, those who will want to engage you on western water will find out that your understanding of the complexities of the western water system, whether they are in Colorado or Nevada, and all of the settlements that you have participated in when you were Chair of the subcommittee to the benefit of westerners in all of our states—will find that knowledge rather extensive. And I can't tell you how much I appreciate your pledge to stay involved in this issue.

You know, this bill was about a very large and dynamic state that had a water regime that was drawn up in the 1940's and implemented in the '50's and '60's that would have continued to deny us change in the governance of our state in terms of our emerging economies and our emerging population; a state that every 10 years has added 10 million people to it. Like it or not, that is our fact, and water is needed for homebuilding, and water is needed for the semiconductor industry, and water is needed for all of these diverse uses.

And that is why the purposes of this Act were changed to say that you have to take into account not just flood control and agriculture as we once thought in 1940, but now we have problems with the environmental. And it is right, it is protected in the constitution, and it does provide instream flows for this protection.

We had to match this because of the tug and pull of 32 million people that California is going to house, and we could not give single authority to the Central Valley agricultural people as they have. And this bill simply gives people seats at the table that were denied by law seats at those tables.

The outcome was the delta system where the governor started out saying he would never participate to him proudly signing the accords with the EPA, Fish and Wildlife, environmentalists, urban, agricultural people. This was a new day for California. Why? Because this bill put people's—we have said from the outset—we said again this morning—we do not object to looking at these provisions.

But let us not suggest that this bill is a consensus bill. You will hear from the very same people that Mr. Dooley recited who, yes,

we agree there are things that need to be addressed, but let us not pretend that this bill—this bill is very reminiscent of what happened when we passed CVPIA.

We invited everybody to negotiate, and everybody was negotiative. Things were going along fine, and then one day the Central Valley water user people simply pulled their people out of the room. They forbid their representatives and others to go into rooms and negotiations.

There have been negotiations now over the last year and a half, and all of a sudden apparently the Central Valley water user people got tired of those negotiations because other people are demanding items for environmental and for big urban economic interests that are dependent upon the same kind of stability you talked about for agriculture.

Homebuilders, commercial development, new jobs, new industry have to have a source of water in our state. So now we have a bill that represents the Central Valley interests, but let us understand that is what it represents. That doesn't mean it can't be changed. That doesn't mean it can't be improved. That doesn't mean there aren't some things in it that are right.

But it also has some provisions in it that are absolutely inconsistent with the intent and the purposes and the consensus that was formed around the CVPIA; the long-term contracts, the water marketing changes, the funding of restoration, the preservation of wetlands, all of which have huge constituencies in our state attached to them.

And as people have already admitted, much of this can be worked out, and we will hear administratively. Well, why don't we get a consensus on what can be done administratively and reduce the things that need to be done statutorily and then work on those? But that is not what this process represents.

The healthiest thing about this I guess is it is going to allow an airing of all of these views. But to suggest that somehow there is a consensus in the state to overturn CVPIA is simply dead wrong, whether it is the business community, the big business community, or the small business community, or the millions of people who live in urban and suburban areas, and those who share in the recreation uses of the delta or the other water uses in the state.

So this may be the beginning, but it is the beginning of a very, very long journey to try to reach consensus. And right now, in fact, what we have had is we are forcing consensus at a whole lot of levels where people never thought it was going to be possible. And to come in now and to interrupt that process to me is the most destructive thing you can do, and that is why Standard and Poor's and other people have said what has happened so far is improve the economic standing of the State of California which has a lot of other problems.

And it is due in no small part to the kind of time and effort that the Senator from New Jersey lent because the biggest problem would have been getting somebody's attention in the Senate. You will find this out, your biggest problem will be getting somebody's attention from some other state to take care of your problem as you see it. That will be the biggest problem you will ever have in the U.S. Senate. And to get this kind of time, this kind of study, this

kind of homework, and this kind of commitment out in our state, talking to people on the ground—a rare moment in your relationships with the U.S. Senate.

Mr. DOOLITTLE. Well, in the interest of further airing these issues, let us excuse the Senator and thank him for the time he has given.

Senator BRADLEY. Mr. Chairman, thank you very much. When I was Chairing these subcommittee hearings on the Senate side, I used to have a general rule. If I couldn't get the politicians off in half an hour, I was in trouble.

Mr. DOOLITTLE. Thank you.

Mr. RADANOVICH. Mr. Chairman?

Mr. DOOLITTLE. Yes. Mr. Radanovich.

Mr. RADANOVICH. For the record, I would like to mark the absence of California Senators Boxer and Feinstein at this hearing.

Mr. DOOLEY. Mr. Chairman, is that a unanimous consent request? I mean, it just is remarkable to me when we are talking about trying to build a consensus and trying to move forward in a constructive fashion that one of my colleagues from California would try to bring this up in order to try to create some type of political division. And I just don't see any constructive——

Mr. RADANOVICH. No. It is more remarkable to me that something so important to the State of California is not represented by California Senators.

Mr. DOOLITTLE. Well, let me just urge us to move on here. We are going to get into the issues, and let us call up our first panel. And while they are coming up—we have been into this hearing now about an hour and a half, and we have our first panel. While they are coming up, the Chair would like to suggest some ground rules one of which is when the votes come, which they surely will, it will be my intent to recess, go to the vote, and come back rather than try and run the hearing during the vote.

Secondly, and if members feel differently, now is the time to express yourselves. We knew this was going to be a long hearing, and we had thought about maybe taking off an hour for lunch, but I think the Chair almost is prepared to recommend that we just keep on going now. When the votes occur, you can grab something over off the Floor. Is that acceptable to people? OK.

I know we are long into this, but the Chair has the unanimous consent request to speak to Mr. Beard about a situation that has just occurred on Monday in my district with the damage to Folsom Dam, and a tremendous amount of water is being released. And I would like to ask unanimous consent for five minutes to engage Mr. Beard in questions concerning that matter before we get back to the CVP Act.

Mr. MILLER. Reserving my right to object, Mr. Chairman, and I do so only to ask you whether or not you would not plan to credit the 400,000 acre feet of water against the 800,000 feet of water that we are losing. I know it is a close call for a lot of people in the state right now, but this was not designed.

Mr. DOOLITTLE. Well, if there is no objection, Mr. Beard, thank you for being here. You are soon to be leaving the service of the government, and we appreciate your willingness to testify today. Could you tell us about this situation of Folsom? For example, I

have read that we are going to lose about 400,000 acre feet with the rupture of the gate. Is that, in fact, what you are expecting?

Mr. BEARD. Yes. If I could, Mr. Chairman, I would like to really ask Roger Patterson, our regional director, to come up. He has been on-site from the moment that the event occurred and can answer your questions more fully than I, since I haven't been there yet.

Mr. DOOLITTLE. That would be fine. Mr. Patterson, please come up.

Mr. PATTERSON. Mr. Chairman, thank you. I did provide a couple of photos to the staff. They can be passed around perhaps as we are talking. In direct response to your question; yes, that is pretty close. There will be a reduction in storage of about 400,000 acre feet over the course of the next two to three weeks.

Mr. DOOLITTLE. And what is the capacity of that reservoir? 1.1 million?

Mr. PATTERSON. The capacity of the reservoir is 977,000 so this is a little over 40 percent of the capacity of the reservoir.

Mr. DOOLITTLE. I am just wondering what do you believe the effect of that is going to be on our water supply and power generation and recreation?

Mr. PATTERSON. Well, we are not sure of all of the details. Let me take them one at a time. We think there will be no impact on water deliveries for this year primarily because of the good water year we have had and the availability of storage. As for power, the Western Area Power Administration has estimated a loss in power generation of about $2 million.

The California State Parks has said they believe there will not be major impacts on recreation on the reservoir. As for downstream recreation for rafting, it is unsafe to be on the river. And so I would say until the flows are down, we will see; maybe three weeks or so of impact downstream.

I was actually a little surprised that the state parks has said publicly that they don't see major impacts on recreation primarily because of how full the reservoir was. It will still be at about 60 percent of capacity. In fact, the lowest point will be five feet higher than our peak storage last year; a contrast in water years.

Mr. DOOLITTLE. It is just frustrating. With six years of drought, we finally get the reservoir to about 90 percent of its capacity, I think I read, and then this happens. We are going to get a formal report from the Bureau of Reclamation about what all happened here?

Mr. PATTERSON. Yes. We definitely plan to do that. For those that don't know the details, it was about 8 o'clock on Monday morning when one of the radial floodgates on top of the dam experienced a partial failure. We are making plans now to barricade or bulkhead above that gate. We think we can do that with perhaps still about 10 feet of water over the sill which will allow us to capture about 100,000 acre feet.

We are putting together a team of experts from within the Corps of Engineers, the State of California and the Bureau of Reclamation to analyze what the cause was and determine if we have similar problems with the other gates. We intend to have that analysis peer reviewed outside of government. Early estimates are that this

is about an $8 million problem to correct, and it could take about nine months before the gate is back in operation.

Mr. DOOLITTLE. So you mean that one gate is an $8 million problem?

Mr. PATTERSON. Yes, to repair this gate and construct bulkheads that we can use and have them available on a permanent basis we estimate will be around $8 million.

Mr. DOOLITTLE. And if it turns out that the other gates are defective, then it will be much more than that I guess?

Mr. PATTERSON. The $8 million includes some costs to do minor enhancement on the other gates, but if they had to be replaced, yes, it would be higher. We have talked to the Corps of Engineers about whether we can operate unrestricted with the remaining gates, and they have said that we can. So we will be able to operate the reservoir for flood control this winter. This failure released about 40,000 CFS downstream. The channel capacity design is about 115,000. We had 50,000 in the river earlier this year during our flood operation, to give some perspective.

Mr. DOOLITTLE. And normal flow at this time of year is about what? 1,500?

Mr. PATTERSON. Normal flow this time of year would be anywhere from 2,000 up to maybe 4,000.

Mr. DOOLITTLE. OK. Well, my time is about up. I appreciate the indulgence of the members and appreciate your responses. Let us get Mr. Beard to come back up and begin with the first panel.

STATEMENT OF DANIEL P. BEARD, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR: ACCOMPANIED BY ROGER PATTERSON

Mr. BEARD. Well, if I could, as somebody who is leaving, make a parenthetical remark about the last discussion, and that is that it points out the importance of dam safety funding. That has been a priority and something that I felt very strongly about. We needed to make sure that we were funding this program because, in essence, it is a zero defect industry. You make one mistake—you don't even get one mistake to make.

Our FY '96 budget was reduced this year on the House side by about nine percent in our dam safety line item. I have been working with the Senate to make sure that we try to restore those funds which I really feel very strongly that we should do.

I would like to thank you, Mr. Chairman, for the opportunity to present the Administration's views on H.R. 1906, the Central Valley Project Reform Act. The Administration believes passage of this bill is premature at this time. Less than three years ago, the Congress passed the Central Valley Project Improvement Act. It is a good law.

It balances the needs of CVP customers including agricultural interests, power users, conservationists, urban areas, as well as recognizing the trust responsibility we have to Native Americans. The law acknowledges, and it is important to note, that all of these groups have a legitimate interest in the Central Valley Project. They are all benefit from the project.

We believe that implementation of the CVPIA continues to make significant progress. We recognize, however, that not all water

users are happy with the law. In response, we have begun steps to administratively correct some of the problems that water users have expressed.

Here are a few examples. Section 5(f) of the bill would clarify that water meters, while not prohibited, are not required on surface water delivery systems. We have also clarified this in 42 interim contracts we have recently signed with our contractors.

Section 5 of the bill would clarify that compliance with the water conservation guidelines and criteria in the CVPIA also would be deemed to meet the requirements of Section 210 of the Reclamation Reform Act. The Bureau of Reclamation has already stated this position in a letter to our interim contractors.

Section 7 of the bill stipulates that funds appropriated for acquisition of water or habitat shall only be used for purchases from willing sellers. All of the water that reclamation has purchased under the authority of the CVPIA for use in wildlife refuges or for fishery purposes has come from willing sellers exclusively.

The Department recognizes a need to be flexible and to work with stakeholders to maintain the consensus we reached in the Bay-Delta Accord last December. In addition to the administrative steps we have already taken, we recognize that we can do more.

For example, the provisions of paragraph five on page 33 of the bill would mandate a 25 percent reduction in water deliveries to refuges during a drought rather than merely authorize such a reduction as the current law provides. The Department believes that administrative actions will achieve the same result.

The Department does not, however, agree with many of the provisions in H.R. 1906 which we believe if enacted would jeopardize the consensus that we have reached in water policy in California. For example, we oppose the provisions in paragraph four on page 33 which would make all taxpayers, as opposed to only Central Valley Project beneficiaries, pay the costs associated with the delivery of water to refuges.

The Department opposes provisions in section 3 which would eliminate all environmental restoration goals for striped bass, sturgeon, and American Shad. We also oppose provisions in the bill which would cap at 340,000 acre feet the instream flows of the Trinity River. These provisions would subject future flow decisions based on the U.S. Fish and Wildlife Service's Trinity River Flow Evaluation Study to formal rulemaking. And additional rulemaking will only add an unwarranted and costly level of review to the existing process.

The Department has been working hard to implement the CVPIA on a timely basis. The Department has also responded to water users' concerns by making appropriate administrative changes. We are willing to continue to meet with stakeholders and to make additional changes.

Mr. Chairman, we have survived the fourth dryest year of record while the CVPIA was in place. We are now in an era of surpluses, and the CVPIA continues to work. At this juncture, we see no reason to reopen the Act. Simply put, we think H.R. 1906 is premature and unnecessary. The legislation threatens the historic consensus that has brought together all the stakeholders in Califor-

nia's water issues around the Bay-Delta Accord which was signed last December.

The Administration believes that reopening the CVPIA—that is, revisiting who gets how much water, for what purpose, at what price, and under what conditions—will only lead to a return of gridlock in California's water policies. We view the CVPIA as an important initiative by Congress which in tandem with the Bay-Delta Accord is bringing back a needed balance and certainty to the water picture. For the first time in history, under the CVPIA, all the stakeholders are working together to address California's water needs.

At this point, we urge the Congress to give the CVPIA the opportunity to meet the objectives that the Congress established less than three years ago. Thank you for this opportunity to testify, and I would be happy to answer any questions either now or later.

[Statement of Mr. Beard may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. I think what we would like to do is go through the members of the first panel, and then each of us will have a chance to address questions to any member of the panel. I would like to recognize Mr. Timothy H. Quinn.

STATEMENT OF TIMOTHY H. QUINN, DEPUTY GENERAL MANAGER, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. QUINN. Thank you, Mr. Chairman, members of the committee. My name is Timothy Quinn. I am Deputy General Manager at the Metropolitan Water District of Southern California. Today, Bob Smith and I are going to summarize for you a statement of a unified Urban Coalition that represents water suppliers in northern and southern California. We collectively provide the water needs for more than two-thirds of the state's population and economy.

And both Bob and I would like to recognize the presence of Laura King representing East Bay Municipal Utility District who is here today, and Laura and her agency were also instrumental in putting together this Urban Coalition position.

In addition to passing on some specific observations that are of particular concern to urban California, we would like to leave the committee with two general observations. The first and foremost is that while we recognize that there is a need for change in CVPIA implementation, our central guidepost is that we must protect the basic goals and objectives of the 1992 Act.

Metropolitan and many other urban agencies in the Urban Coalition supported the Act. We agreed with its objectives. We agree with them still. And we believe that any change must be done consistent with the original objectives of the 1992 Act.

Second general observation—that after three years of experience in which we have been heavily involved as north and south urban agencies, we do believe that both legislative and administrative change is required for the most effective implementation of this important piece of legislation. As a general rule, our advice to this committee and to the Congress is to rely on administrative relief when administrative relief can get the job done.

As to our specific concerns, I will touch on a few, and Bob Smith will cover a few as well. First, and maybe most important, to the

extent that this legislation moves forward, we would urge the Congress to consider including a new approach to the process of CVPIA implementation.

It is hard to find very many people out there who are satisfied with the current federally dominated implementation process. So we would urge you to include a new approach in legislation that is patterned after what is apparently a widely agreed upon success, the Bay-Delta Accord.

Specifically, the Urban Coalition would recommend a process that satisfies two key criteria. First, there should be a co-equal partnership between the state and Federal Governments, something along the lines of that which is being developed within CALFED in California.

Second, we think it is essential that there are meaningful substantive avenues for stakeholder input into decisionmaking, and we mean by that urban, agricultural, environmental, and fisheries stakeholder interests.

Because of its importance, I should also take a few moments to talk about the Urban Coalition's perspective on the 800,000 acre feet of dedicated water, perhaps the most controversial feature of the CVPIA. A central tenet of the urban position is that this water must remain available primarily for fish and wildlife restoration purposes.

Decisions about the water should be science driven, preferably through a state-Federal stakeholder process. At the same time, we do believe that the 800,000 acre feet should be capped to provide some certainty for CVP water users, and that capping mechanism should include a crediting process consistent with the December accord so that other water losses from other regulatory arenas are credited against the 800,000 acre feet obligation.

To assure reliability for the environment, the Urban Coalition strongly supports the development of effective and timely methods to purchase water to the extent it is required above the 800,000 acre foot cap. And you can't get there from here without that commitment to environmental water purchases. Lastly, we believe that reuse should be acceptable but only if it is understood to be a clearly secondary purpose of the environmental water.

In closing, we would like to thank the Chairman and members of the committee for this opportunity to express our views. I must say that taken on its whole, currently H.R. 1906 is not consistent with all of the important principles that we are putting before you in our written testimony today.

For that reason, we cannot support H.R. 1906 in its current form. I want to provide assurances to others on the committee that to the extent this develops and the Urban Coalition believes it is an effort to gut the original Act, we would oppose such legislation.

However, I say that optimistic that we will be able to work with the members of this committee and the other stakeholders to seek changes consistent with the principles that we have put before you today, and with the result being legislation that can enjoy the support of urban California before we are done. Again, I would thank you for the opportunity to present the Urban Coalition position today and will be glad to answer any questions at the appropriate time.

Mr. DOOLITTLE. Thank you. And Mr. Smith is recognized.

STATEMENT OF ROBERT SMITH, ASSISTANT GENERAL MANAGER, SANTA CLARA VALLEY WATER DISTRICT

Mr. SMITH. Mr. Chairman and members of the subcommittee, thank you also for this opportunity along with Mr. Quinn to present the Bay-Delta Coalition's view on recently introduced Central Valley Reform Act legislation. I am Bob Smith. I am the Assistant General Manager of the Santa Clara Valley Water District located in San Jose, California.

The Urban Coalition is a diverse group of both northern and southern water agencies who serve very dynamic urban economies. Commerce and industry in our combined service areas generate over 11 million jobs and over three-fourths of the state's $800 billion gross annual product, representing roughly 10 percent of the national and total economy.

We know that in order for the urban economy to grow and prosper we must bring stability to the environment, particularly to the Bay-Delta watershed which generates most of the urban water supplies in California. In his testimony, Mr. Quinn highlighted two key concerns of the Bay-Delta Coalition that dealt with establishing a more effective CVPIA implementation process and with the management of the 800,000 acre feet of dedicated environmental water.

I would like to highlight a couple of more concerns that the coalition would like to bring to your attention this morning. First, we believe that it is critical to address the issue of water supply reliability for the urban areas served by the CVP. One of the stated purposes of the CVPIA is to achieve a reasonable balance among competing demands for use of Central Valley Project water.

While the CVPIA defines a minimum 75 percent reliability for environmental water allocated to fish and wildlife purposes, it provides very little guidance on how remaining CVP supplies should be allocated. Urban populations served by the CVP have suffered increased water supply uncertainty, and efforts by Santa Clara and other CVP M&I contractors to resolve this uncertainty through administrative remedies have not been successful. As a CVP M&I contractor and a member of the Urban Coalition, we believe that a minimum level of contract deliveries for M&I purposes should be included in the legislation.

Apart from the fundamental importance of CVP water supplies to urban populations and economies, there should be recognition that CVP urban contractors are already paying for M&I water supply reliability. Current cost allocation and rate-setting methods used by the Bureau of Reclamation assume that water delivered for M&I purposes will have greater reliability relative to the irrigation purpose, and as a result, M&I water rates are proportionately higher. This financial assumption shifts millions of dollars of cost to M&I water users, and it is time to back up that assumption with legislative language.

The Urban Coalition believes that in order for the urban water supply to operate effectively and plan for their needs, the reliability of the CVP M&I water supply should be defined in H.R. 1906, and

that the definition of reliability should reflect the economic importance, public interest, and cost allocation factors just discussed.

Another key concern of the coalition is maintaining levels of funding to the restoration fund in a manner sufficient to accomplish the environmental objectives of CVPIA. To the extent that provisions of H.R. 1906 decrease revenues to the restoration fund through elimination of tiered water rates and contract renewal surcharges, adjustments should be made to ensure revenues are replaced.

The Urban Coalition also believes that with appropriate amendments H.R. 1906 could provide an opportunity to increase the effectiveness of the restoration fund by increasing the certainty of revenues and by providing better coordination of state and Federal restoration funds and a joint state-Federal stakeholder process.

In closing, I too want to thank the subcommittee and its staff for focusing on the CVPIA implementation which is so important, not only to urban water users, but to all interests with a stake in resolving the long-term Bay-Delta issues.

As Tim mentioned, although H.R. 1906 in its present form is not consistent with the principles of the Urban Coalition on amendments of the CVPIA, we look forward to working with you and with all interested parties to develop appropriate amendments that will address our concerns and achieve a bill that we can all support. Again, Mr. Chairman, members of the subcommittee, thank you for your time, and I too will be available for any questions at the appropriate time.

[Statement of the Urban Coalition may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Our next witness is Mr. Daniel Nelson.

STATEMENT OF DANIEL G. NELSON, EXECUTIVE DIRECTOR, SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Mr. NELSON. Mr. Chairman and members of the subcommittee, good morning. My name is Dan Nelson. I am the Executive Director of the San Luis & Delta-Mendota Water Authority. The Authority is comprised of 31 agricultural and urban water agencies serving 1.3 million acres and 500,000 people in the San Joaquin Valley and San Benito and Santa Clara Counties. It also delivers water to about 75,000 acres of wetlands on the west side of the San Joaquin Valley.

Since enactment of the Central Valley Project Improvement Act in October of 1992, we, the customers of the CVP and others, have struggled along with the Federal agencies to implement the law. At the same time, our Authority has been extremely active in Bay-Delta issues. Our involvement in the Bay-Delta process has helped us focus on new and better approaches for implementing water policy and solving problems.

We and the Bureau agree that there are many problems with the implementation of CVPIA. Commissioner Beard has outlined several of those problems today. Where we differ is on how to solve them. Water users believe that amending the CVPIA to provide certainty and clarity for all parties is the best solution. And, frank-

ly, what the Bureau on the other hand says is, "Trust us. We will do the right thing."

Until recently, however, the Federal agencies have resisted improving the implementation of CVPIA, and they began to show enthusiasm for administrative remedies only when frustrated water users began seeking legislative solutions. H.R. 1906 would provide badly needed clarification and direction for Federal agencies so that environmental improvements can be implemented promptly and effectively. It also would clearly define what are now vague and open-ended obligations.

I want to spend a few moments to address the kinds of things that H.R. 1906 does and to clarify what it doesn't do. H.R. 1906 reserves 800,000 acre feet of CVP water for systemwide fisheries protection, mitigation, and restoration. This water also would be used to meet ESA and Bay-Delta water quality needs.

H.R. 1906 requires CVP customers to continue paying more than $30 million per year into a restoration fund earmarked for environmental restoration. H.R. 1906 continues to require implementation of specific fishery improvements intended to restore or enhance Central Valley fish production. It also obligates the Interior Department to work jointly with the state in pursuit of California's fish doubling goal.

H.R. 1906 also maintains Trinity River fish flows of at least 340,000 acre-feet annually while the need for additional flows is steady. H.R. 1906 maintains existing guarantees of firm water supplies for wetland habitat, and the bill continues to give wildlife refuges priority over agricultural users during shortages. H.R. 1906 continues to authorize water transfers outside the CVP service area, and it speeds transfers within the service area.

In short, H.R. 1906 continues to provide more than 1.3 million acre feet of water and tens of millions of dollars annually for the environment, while also facilitating water transfers to other regions of the state. Clearly, H.R. 1906 is not a roll back or gutting of CVPIA, and I need to add that our modelers have recently taken a look at the impacts of H.R. 1906 in the context of other Federal regulations including ESA, the Clean Water Act, Bay-Delta agreement, et cetera. And we anticipate that if H.R. 1906 was implemented tomorrow, the average water supplies for most of our members would be in the 65 to 75 percent range.

H.R. 1906 is not a threat to the Bay-Delta agreement. As a participant in and signatory to the Bay-Delta process and accord, I want to reaffirm our commitment to the accord and its full implementation. H.R. 1906 is supportive of the agreement because it will aid in the development of a long-term delta solution by providing water users with more certainty about the cost and obligations of the CVPIA.

The only people who say the CVPIA is perfect are the people who wrote it. I guess it is only natural for them to feel that way, but those of us who actually have to live with CVPIA, California's agricultural and urban water agencies, are asking Congress to make some reasonable improvements to the CVPIA.

H.R. 1906 is reasonable despite all of the white hot rhetoric to the contrary. It attempts to bring to the CVPIA the balance and certainty that are critical to making progress on long-term delta so-

lutions. Water users can't be expected to endorse long-term remedies when they face open-ended CVPIA obligations whose costs and consequences are unknown.

The customers of the CVP strongly support H.R. 1906, but we acknowledge that it can be improved. For example, the ideas put forward by the Urban Coalition are very good, and we look forward to working on them with the coalition and the committees. We will work with any and all parties who want to rise above the rhetoric and make a genuine effort to ensure that the Central Valley Project fairly meets the needs of all Californians. Thank you, Mr. Chairman and the committee. We will have some additional written material that we would like to submit for the record later.

[Statement of Mr. Nelson may be found at end of hearing.]

Mr. DOOLITTLE. Thank you very much. I would just like to observe as a member of this committee, when the original CVPIA was put through, I would never have thought of the term consensus as applying to that because there wasn't a consensus. There was a majority vote, and they had the votes, and we lost. And I wouldn't represent there is a consensus now either. The fact of the matter is these water issues are highly contentious, but I think some things have been brought out that show the need for change.

I would like to address this question to either Mr. Quinn or Mr. Smith. In your written testimony, you state on page three the following, "The Urban Coalition believes that if allowed to continue along its current path, CVPIA implementation will continue to deteriorate and eventually polarize Bay-Delta interests to such an extent that comprehensive resolution of long-term Bay-Delta problems will slip from our grasp."

Would you elaborate further upon that statement? What did you mean? I mean, we have gotten the impression—we have heard basically representations being made that, "Hey, this is a new law. Don't get involved, and yet give us time to work it out." But we have had the law, I think, about two and a half years on the books, and there are some real problems. And you say in your testimony that if we continue to allow the natural course of events, then things are going to get worse, not better.

Mr. QUINN. Well, Mr. Chairman, the urban interests in California over the last five years have done a lot to change California water politics. We now work very closely in the coalition interests. We are feet-on-the-ground, got-projects-to-operate entities. We have to supply water to people and the businesses that employ them. We view ourselves as problem solvers.

As I think our statement indicates, we are strong proponents of the change in direction that CVPIA resulted in. We still believe that that change was fundamentally important. But there have been problems identified by those of us who are working within this process on a day to day basis, and we would like to see those problems addressed.

If you don't address problems in this format, on the State Water Resources Control Board format, or on the ESA format, we think those problems, if left unattended, would also lead to an unraveling of consensus and solution finding. Our Coalition statement essentially recognizes that we believe there are problems to be solved, and we would like to take a responsible position to try and draw

all the parties together to come up with mutually agreeable solutions so that we can solve them.

Mr. DOOLITTLE. The only consensus I am aware of occurred in the Bay-Delta Accord which is a remarkable situation. I mean, do you believe there is consensus? Is there another example of consensus out there?

Mr. QUINN. Let me risk this answer that I believe there was consensus—that there is consensus now, that the objectives of the CVPIA are important and remain important. I think there is consensus on that question.

Mr. DOOLITTLE. Yes. I will give you that. OK.

Mr. QUINN. And now we need to seek to find out how many people we can draw to a common vision of what kind of implementation process is the best for achieving that common view of what we need to do.

Mr. DOOLITTLE. Well, do you believe that this bill advances the process or retards it?

Mr. QUINN. I believe with appropriate change it could advance the process.

Mr. DOOLITTLE. OK. Let me ask Mr. Nelson, do we have more water transfers going on since CVPIA became law or less?

Mr. NELSON. My impression is that since CVPIA, water transfers have actually been hampered. We haven't realized any transfers to my recollection outside the CVPIA, and the transfers within the CVPIA that used to be fairly normal and day-to-day type operations or within day-to-day type operations have now been much more burdensome.

And my sense is that that is one of the things—again, going back to consensus, that we all have a consensus, is that we want to see transfers work better than they are working now and that we do want to provide opportunities for water to be transferred and for people to be compensated for water that is being reallocated. So the short answer is, no, CVPIA as implemented has not helped transfers; in fact, has hindered it.

Mr. DOOLITTLE. All right. As implemented. What about as the statute reads? What is contributing to the slowdown in the transfers?

Mr. NELSON. Well, prior to CVPIA, the criteria for transferring water within the project was very simple. Essentially, it could be accommodated by a few phone calls between participating districts, cooperating districts, and the Bureau of Reclamation, and water could be transferred from district to district very simply. With the criteria in CVPIA, unfortunately, affecting those types of transfers, the criteria is much more burdensome. Also the——

Mr. DOOLITTLE. Now, this is the statutory criteria you are referring to?

Mr. NELSON. That is correct.

Mr. DOOLITTLE. OK. So that is going to be tough to fix administratively, wouldn't you agree?

Mr. NELSON. Yes.

Mr. DOOLITTLE. OK. Mr. Beard, my time is about up. What is your view of that?

Mr. BEARD. As was pointed out, we haven't had any requests for transfers outside of the Central Valley Project service area as of

yet. There is consensus that we have to find ways to create incentives to move water around.

My view is I don't think we have enough experience yet to know what the impediments are, whether the impediments are the district, whether they are Bureau of Reclamation procedures and practices, or whether it is the law. It is not for lack of trying, believe me. Our agency, Mr. Quinn and others have worked long and hard to try our very best to make sure that we have as many transfers as possible. I don't know whether Mr. Quinn wants to comment.

Mr. DOOLITTLE. Do you wish to comment, Mr. Quinn? You don't need to. It is up to you.

Mr. QUINN. I am anticipating questions about this down the road.

Mr. DOOLITTLE. OK. Well, my time is up. Let us go on to Mr. Miller. We will get back to the water transfers when we get around to me again. The gentleman from California, Mr. Miller, is recognized.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Beard, how many applications have there been for water transfers outside of districts outside of the project?

Mr. BEARD. None. To us for approval, you mean?

Mr. MILLER. Yes. Well, I mean, it happens——

Mr. BEARD. Under the CVPIA there have been a number that have been discussed.

Mr. MILLER [continuing]. CVPIA. The transfer would have to come for Secretarial approval. Is that correct?

Mr. BEARD. Yes.

Mr. MILLER. Have any been submitted to you for transfer?

Mr. BEARD. No.

Mr. MILLER. What about within the districts or within the project?

Mr. BEARD. Within districts? We had 31 in 1994 for official approval and 33 this year.

Mr. MILLER. So what was the impact of the CVPIA on the approval of those?

Mr. BEARD. Well, they were all approved; 3 to 60 days to approve them.

Mr. MILLER. Well, Mr. Nelson said it has made it much more complicated—the CVPIA—the criteria in the legislation has made it more complicated. I didn't even know there were criteria in the legislation for in-district transfers—I mean, in project transfers.

Mr. BEARD. Yes, there are.

Mr. MILLER. What has been the impact of those?

Mr. BEARD. Well, at least from the Bureau's perspective it has not added burdensome requirements or slowed down the process. But Mr. Nelson may have a different view. And, I happen to be of the view that the most important thing is to find a process that is effective, efficient, and quick so that we can all meet the objectives that we agree we want to try to achieve.

Mr. MILLER. The issue of stakeholders was brought up in the testimony, Mr. Beard, and I think Mr. Quinn had some good things to say on that. But what happened to the initial efforts. Weren't there some efforts to try to create an advisory committee or stake-

holders committee or what have you to work this through? What happened with that?

Mr. BEARD. Well, we went out to the various interest groups that we deal with on a regular basis and asked for their views about the possibility of setting up an advisory committee of some kind under the appropriate Federal laws.

And I think the conclusion that was reached by all the various interests was they weren't interested in having a formal advisory body created. They didn't think that it was necessary, and they felt that the processes and procedures that we have been using for public outreach were more than sufficient to ensure that they were engaged on a day-to-day basis.

Mr. MILLER. Well, is there stakeholder involvement or isn't there stakeholder involvement?

Mr. BEARD. Oh, there is continual stakeholder involvement. We are holding meetings almost every day on all the various provisions. The Act itself requires somewhere near 100 separate actions to take place, and most of those actions are underway at the present time. About 10 of those are subject to rulemaking procedures and will take longer for final rules to be in place. But we have had innumerable meetings. There is also no shortage of briefings, and we have made a conscious effort to do that.

Mr. MILLER. Well, there seems to be a rub between your interpretation and your colleagues' at the table in terms of you cite a number of things that you have done administratively. Have the stakeholders presented you with a consensus package, if you will, on administrative changes? Has there been agreement at the stakeholder level that has been presented to you and saying, "This is what we"——

Mr. BEARD. Nothing to fit that description, no. There hasn't been anybody walking in the door and laying something down on the table. I think this bill would represent the most comprehensive list of suggested changes; representing one viewpoint or a number of viewpoints, if you will.

Mr. MILLER. So the notion that there are these administrative changes that are just hanging out there because the Bureau or the Secretary or somebody hasn't gone along with them is not quite accurate because one of those recommendations may, in fact, be opposed by another stakeholder? Is that correct?

Mr. BEARD. Sure. We made a number of administrative changes in our practices through the contracting procedures. We have also made a number of changes through letters or other administrative decisionmaking processes, and we will continue to do that.

It is not like we don't talk to the people at the table and the people in the audience here on a regular basis. We are in contact on a daily basis discussing all these issues. And we have had interruptions now and then, but we have proven that when we get together, sit around a table, and people are serious about it, we can forge compromises and consensus such as the Bay-Delta Accord.

Mr. MILLER. Back to the in-project transfers, have you disapproved any of those?

Mr. BEARD. Any of the in-basin? No.

Mr. MILLER. Those requirements that you talked about are questions of whether or not it confers additional rights and/or is in com-

pliance with state law, is it not? So those have been reviewed and those have been——

Mr. BEARD. We haven't disapproved any, no.

Mr. MILLER. Thank you. Mr. Chairman, how are we going to handle the questioning?

Mr. DOOLITTLE. I think we are going to go back and forth—the normal fashion of questioning. We will get to you, Mr. Farr. Is that all right? OK. Mr. Radanovich is recognized.

Mr. RADANOVICH. Thank you, Mr. Chairman. I think there is a bit of discussion going on regarding legislative fixes and administrative fixes, and I want to relate a story that might address the concern for a cap or in the legislation on a cap on the 340,000 acre foot instream flow on the Trinity River as it relates to the current study on the San Joaquin River and some of the experiences that I had with that administratively.

The point I am trying to make is that at least in the San Joaquin River Study we had a project that was supposed to be studied with the results brought up in 1996, $5 million allocated for it. And during an election year, it was brought up by Secretary Babbitt—a guarantee that no water would come from the San Joaquin River or from California agriculture in order to go into and fund a fishery that might be proposed by this project in 1996. Well, clearly, that means that there should be no study, and that study should be stopped because there is no other place that there would be water coming for that.

It was announced that that was the case, but it was also concluded that that study would continue again until 1996. And it left the whole thing in jeopardy and an enormous amount of uncertainty. And it speaks to the requested cap on Trinity River instream flows simply because it leaves too much to the Administration. That could go from 340,000 acre feet to 2 million acre feet overnight.

And I think that if you want to provide some type of security to this process, you have got to tie in the loose ends on that. And I think that it is unfair to expect people on the other side to anticipate that administrative fixes would give any security to the water supply in the area.

I want to ask a question of Mr. Quinn, Mr. Smith and Mr. Nelson—just a brief yes or no, and that was with this proposed change, CVPRA as it is being called, do you believe that it maintains the original objective of the 1992 Act?

Mr. QUINN. We believe that it could with appropriate change.

Mr. RADANOVICH. The same, Mr. Smith?

Mr. SMITH. Yes.

Mr. RADANOVICH. And Mr. Nelson?

Mr. NELSON. Yes.

Mr. RADANOVICH. Would you, Mr. Quinn and Mr. Smith, care to provide me with—not here in this testimony but in written form—what you would suggest the changes might need to be in order to make that the case then?

Mr. QUINN. We have every intention of so doing.

Mr. RADANOVICH. Very good. Thank you very much. Mr. Nelson, there was discussion regarding transfers, and I guess your statement—was that regarding in-district transfers or was that out-of-

district transfers?—your comment about the fact that the 1992 legislation stalled the process or made it more difficult.

Mr. NELSON. Yes. I was referring to in-project transfers. In other words, one CVP contractor transferring to a neighboring CVP contractor as an example. And one of the comments that was made that all of them have been approved within a 3 to 60 day time period, well, that is exactly the type of problem that we have been confronted with.

A lot of the transfers that we need to do for optimal management reasons need to be done almost immediately. I mean, when it is mid-May and you find that you don't have enough water for your crop and you want to purchase some water from a neighbor, you can't wait until July or August to have approval to do that. I think what we have done is put our finger on the exact problem that we are having, and that is the timing of approval under the CVPIA criteria that wasn't in place prior to that.

Mr. RADANOVICH. I am aware of another transfer that is stuck in the Courts regarding a Mr. Areias on the west side, and it seems to me that that one isn't transferring very smoothly, or is that a different issue?

Mr. QUINN. If you would like, I can speak with some authority to that particular case.

Mr. RADANOVICH. Well, I guess I am speaking of the fact that it is not maybe as smooth as—you know, I mean, there are bugs that need to be worked out, and hopefully this legislation addresses the bugs that need to be worked out.

Mr. QUINN. Well, with the Chairman's permission, if I might give you an update. I have spent my entire career as a champion of the water market in California. There was a time when only people like Tom Graff and Tim Quinn in a group like this would favor the idea. We have moved considerably beyond that. I also happened to have been the negotiator on behalf of Metropolitan with the Areias dairy farm's transfer.

From our perspective, it would not be fair to characterize the original Act as hindering our opportunities because our opportunities were zero prior to the passage of the Act. So one of the things we fought for was the ability to move water out of the project on a voluntary basis. We have learned a considerable amount though in the last three years.

Within a month, we were approached by the Areias dairy farms, and they proposed a transfer. We earnestly negotiated that transfer. It took quite a while to work out the details. After about eight or nine months, we went public. If you think of the Fram oil filter man, "You pay me now or you pay me later," that is how it is dealing with the agricultural districts.

We had thousands of people showing up to public meetings in Los Banos, California, and we are, quite frankly, learning the lesson that finding a way to work cooperatively with the districts is probably going to be more effective for transferring water. This is going to be a tough one for the urbans.

My board has given me very clear instructions to make sure that I protect the transfer provisions and their effectiveness if this legislation moves forward. So we are certainly prepared to talk about and potentially agree with a clear role for approval by the districts.

There are three things that we will be watching for. First, a clear set of criteria that guide district decisions; second, an appeal process to the Secretary of Interior; and the third thing is to create some sort of mechanism through which the district must create a district transfer program if its landowners want to.

And we think that those kinds of changes if handled appropriately could result in a more effective transfer mechanism than we have right now considering the controversy surrounding the Areias dairy farms transfer.

Mr. RADANOVICH. OK. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Mr. Dooley is recognized.

Mr. DOOLEY. Thank you. Mr. Beard, I would like to just address some of the issues associated with the clarification of the 800,000 acre feet and its disposition. Would you agree that H.R. 1906 in its clarification of the 800,000 acre feet is fairly consistent with the way that the 800,000 acre feet was accounted for in the Bay-Delta Accord?

Mr. BEARD. I am not sure that I can answer that question because I am not altogether sure that we have in practice developed the knowledge that we need to be able to say with any specificity how the 800,000 acre feet has been used. I think it is fair to say as you look back on what has happened, it is important to give a little bit of history. I think it helps to put this issue in perspective because there is no issue that is more controversial.

The legislation was passed in October of 1992. The first year, 1993, that we had to operate under this, frankly, was a dry year, and it was a year in which everybody was racing around trying to figure out what was in the bill and who was going to do what and how they were going to do it.

In 1994, we were enjoined from implementing the 800,000 acre feet provisions as a result of a Court action so that this year is the first year we have even had an opportunity to address the issue of how we would approach the 800,000 acre feet with any specificity. And I really think that is an important provision, and we have been working with the stakeholders involved.

We believe we have a process laid out on how we are going to try to address the 800,000 acre feet. It is a process that is fair, and it is one that will give people the information they need when they need it. The Fish and Wildlife is going to determine the necessary flows that they need to meet the goals of the Act. In April of each year, the Department will determine the type of water year that we are having and as a result, what we need for carryover storage and anticipate——

Mr. DOOLEY. I would just interrupt, because I guess I was under the assumption that there was a general consensus about the 800,000 acre feet. It was a part of the Bay-Delta agreement and was consistent with the position that it would be inclusive of obligations by the Central Valley Project of ESA and clean water standards. Was that not your interpretation, Mr. Beard?

Mr. BEARD. Yes. For the life of the agreement.

Mr. DOOLEY. And how long is that?

Mr. BEARD. Three years.

Mr. DOOLEY. And are you saying that the Bureau then has not adopted that beyond that three years?

Mr. BEARD. No. I think that during the three-year period the State Water Resources Control Board is going to take certain actions which are going to—at least everybody is anticipating—impact the system and the use of the 800,000 acre feet.

Mr. DOOLEY. Well, I guess this is where a lot of us are struggling. When we look at which issues can be handled administratively versus which need to be handled legislatively, obviously, we have an issue here where we are going to have some disagreements of opinion. And it cannot be—I guess some people would argue—clarified by the underlying legislation, the CVPIA. Some of us think it is because of a lack of reflection of the report language.

Even if the Bureau issued an opinion that was consistent with what is in the Bay-Delta Accord, there is still the potential for problems because of the lack of specificity in the underlying legislation. You could be subject to litigation by the environmental community, for example, could you not?

Mr. BEARD. Yes. We have been sued a number of times already.

Mr. DOOLEY. Well, and I guess that is where I have a difficult time understanding why the Bureau is not supportive of actions by Congress to clarify and remove some of the ambiguity of that 800,000 acre feet.

Mr. BEARD. Well, I think the fairest thing to say, Congressman, is that I honestly don't think we have enough information to know what kind of changes we would recommend to you be made or if any changes should be made at all.

As I said, we have developed a process to go through this year, and we have outlined a procedure for the next three years. We have made certain commitments about how we will approach it through the Bay-Delta Accord with the agreement of the state. The State Board is now in the process of looking at the possibility of other stakeholders, or water right holders I guess would be a better way to put it, participating with the Federal project and state project.

And that is going to change the landscape—the actions of the State Board will. So at the end of this three-year period under the Bay-Delta agreement, we are all going to be looking at a different landscape than we have today. I think we will have a better idea at that point as to what the impacts will be on each individual class of user.

There is an assumption that is made by some people that 800,000 acre feet comes from agriculture and it comes every year. That isn't the case. This year we know, to meet the goals outlined in the Act, we are going to need less than 800,000 acre feet. The real difficulty comes in a dry year. The question, then, is who is impacted and who is going to contribute. And the landscape we will deal with in three years is going to be different than the landscape we will deal with today.

Mr. DOOLITTLE. Mr. Pombo is recognized.

Mr. POMBO. Thank you. There is something you said, Mr. Beard, that I am a little bit confused on. You said that this is the first year that you have implemented the 800,000 acre feet and that previously to this you were unable to do that. But last year I was told that you were keeping 200,000 acre feet in New Melones because of the CVPIA requirements on the 800,000 acre feet.

Mr. BEARD. Let me ask Mr. Patterson to address your question because I think it is a fair question to address. Roger, why don't you move up to the table?

Mr. POMBO. Just pull your chair up there, Roger.

Mr. PATTERSON. What was the question?

Mr. POMBO. Mr. Beard said that this is the first year you will be able to implement the 800,000 acre foot reduction because in previous years you were either enjoindered or you didn't have time to do it. Last year, I was told that you were keeping 200,000 acre feet in New Melones because of the 800,000 acre foot reduction in CVPIA. And I think those two statements are contradictory, and I would like that explained to me.

Mr. PATTERSON. I think what the commissioner was referring to is that this is the first year with the 800,000 that there hasn't been some external influence. In 1994, we were enjoined for part of the year from being able to dedicate and utilize the 800,000 acre feet. Prior to being enjoined in March I think it was, we had utilized a small amount of the 800,000.

Once we had the injunction lifted, we were back in a position to finish up the year and use some of the 800,000 which is what we did at New Melones Reservoir.

So we had an interrupted year, if you will, in 1994. This is the first year that we have not had something like that. And this is also the first year that we have been clear on how we would credit the Bay-Delta component against the 800,000.

Mr. POMBO. So it is basically incorrect to say that you have not done it before this year, but this is the first year you will be able to do it for the whole year?

Mr. PATTERSON. In 1993—as we started into the operating year, we were just a few months into CVPIA—there was a prescription made by Fish and Wildlife, and water was dedicated and utilized, I would say, on a very interim basis.

Mr. POMBO. So in 1993 how many acre feet was set aside under CVPIA?

Mr. PATTERSON. In 1993, essentially all of the 800,000 was utilized.

Mr. POMBO. And in 1994, how many acre feet were set aside under CVPIA?

Mr. PATTERSON. In 1994, because of the injunction, there was less than 100,000 acre feet utilized.

Mr. POMBO. What about the 200,000 out at New Melones?

Mr. PATTERSON. The 200,000 acre feet was storage. It was not yield——

Mr. POMBO. By what authority did you set aside the 200,000 acre feet? If it was not CVPIA, what was it?

Mr. PATTERSON. I don't think it is fair to characterize it as it was set aside. We basically made a decision to go into the fall with higher storage in New Melones in order to be able to meet fall flows and to be able to have some temperature capability on the Stanislaus that fall. So to say there was 200,000 acre feet set aside I don't think is a fair characterization.

Mr. POMBO. I would say it is a fair characterization because it was 200,000 acre feet in a drought year that was not released because of a certain reason. You say it was because of fall flows and

temperature controls. I believe that is because of the CVPIA that you had the authority to do that, and that was under the CVPIA that you were acting. So if we go back to 1993, you set aside the 800,000. In 1994, I know of 200,000—I am not sure of the entire system, if there was anything else—so to say that this is the first year you have done it is not exactly correct. It may be the first—well, it is not even the first year that you have done a full 800,000 so——

Mr. PATTERSON. That is what I said. This is the first year without extenuating circumstances—1993, brand new law, very quick prescription made for operation of the 800,000. 1994, we had the injunction during part of the year. And 1995 is the year underway. Part of the problem with the 200,000 earmarked—and you are correct—there was additional storage held in New Melones—is the measurement of the 800,000 is done on a yield basis.

It is not only how much did you have to keep in storage, so that right or wrong was the decision that was made, and that is the reason we did it.

Mr. POMBO. I would like to ask Mr. Beard one more question, and it has to do with the legislative fix. On areas where you are in agreement or at least partial agreement with what we want to do in terms of a legislative fix, I don't understand why you would not want us to do that and would only want to do it administratively. That is confusing to me because, you know, regardless of this Administration or who your successor will be, we don't know who is going to be there six months from now. We don't know who is going to be there two years from now.

And it would seem like if we can come to a consensus on what it should say and what the intention was or what we learned over the three years of implementation, that we should make those changes so that your agency is bound by it, but also the water users have some certainty in knowing this is what the law is, and this is what we mean by that so that you don't get an injunction against you or that you don't get a lawsuit against you.

I am a little bit confused as to why you would not want that. I could understand in areas where you disagree with this, but I think there is a number of areas where you do agree with us.

Mr. BEARD. We have two reasons. Well, first of all, let me say to you that where there is consensus among all the parties, the form by which you lock in the agreement is to me less important than the fact that you have reached consensus.

There are probably two reasons why legislation is not the best way to go. First is that things change, and, when you reach agreement and you lock it in legislatively, over time conditions change, and legislation is a very difficult thing to change. One of the reasons we haven't moved a bill (You move a bill on the CVP about once every 20 years) is for the very reasons we have had this morning.

It is a very contentious enterprise, and it takes a long time. So that if conditions do change and you are locked into a legislative fix of some kind, it is difficult. And one of the best examples of that is Trinity. At the time that the Trinity division was authorized in the early 1950's, the commitment was made that they were guaran-

teed minimum flows to preserve and protect the fishery of the Trinity River.

And the question was how much water is that? And the Fish and Wildlife Service gave their best guess as to how much water that was. Well, it turned out the answer was wrong. It wasn't enough water, and the Congress recognized that in 1992. And now, you are dealing with it here again. So that is the first reason that I think it is important.

The second reason I think that legislation is not the ideal way to approach many of these problems is that there is a tendency when legislating to skip over the most difficult problems and say, "Well, that is something somebody else—the agency—can figure out in regulations or whatever."

Time after time we have struggled administratively with trying to resolve problems where the general guidance provided by the Congress was not specific. And so it is difficult in legislation to be as specific as you need to be to protect everybody's interests. So those would be the two primary reasons why I think some other form may be the right way.

There may be issues where we can all agree that legislation is the right way to go, and that is fine. But as a general matter, to answer your question, that is how I would approach it.

Mr. NELSON. May I have the opportunity to comment on that if it is appropriate?

Mr. DOOLITTLE. His time is expired. Let us catch it in some other fashion. Mr. Farr is recognized.

Mr. FARR. Well, thank you very much, Mr. Chairman. I want to follow up on Mr. Radanovich and Mr. Dooley's observation; essentially, the issues of administrative solutions versus legislative solutions. It seems to me just from the testimony we have had here today, and I think we are getting down to the nitty-gritty, that if you don't have essentially a system that allows all users and all benefactors of it to come to some kind of consensus, the remedy is lawsuit.

That ties up the solution whether it be a legislative or administrative solution. So it is in our best interest—all of our best interest to try to figure out how to deal with this complex situation without losing players to the Courts, essentially seeking remedy in the Courts to jam it rather than to solve it.

And I guess what I am very interested in following up on on their questioning, Commissioner Beard, is, I mean, you are leaving, and you have certainly made a big commitment to this. I notice that in Senator Boxer's comment that she believes that the way to improve the CVPIA must be to exhaust all possible administrative solutions before legislative solutions. How much of the issues raised in the bill, in 1906, can be solved administratively, and are there any provisions that we really need some legislative correction on?

Mr. BEARD. Well, I think most of them can be dealt with; but there are some that are just difficult and can't be removed; where there are specific things in the base statute you can't get around. One example that comes to mind is tiered pricing. Tiered pricing is required under the statute in all future long-term contracts. Now, there are instances where I think we all agree that maybe

that is not the best way to do it. Using the mechanism of price to promote efficiency and conservation is a good idea, but it may be that we cannot overcome that problem.

Mr. FARR. So this bill could be a vehicle for solving some of the administrative problems that——

Mr. BEARD. Yes. But that is not going to be a problem until about 1997 or 1998. We are doing the programmatic EIS, and until we are finished with that and negotiate the contracts, we don't need to fix that problem. So it is not a problem that has to be fixed in the next two months.

Mr. FARR. Well, do you have to do all the administrative fixes that need to be done? Do you have adequate staff? Because it seems to me that if we can't administratively handle that, even if you jam the system with more law, you are not going to be able to get that law implemented.

Mr. BEARD. I think everybody agrees we have adequate staff. It is really great when you are leaving. You can say all kinds of things. I think the staff has done a remarkable job. This is a complex piece of legislation. These are complex issues. They are fundamentally important, and the people in the Bureau and the Fish and Wildlife Service and the other Federal agencies have worked very hard to try their best to meet the legislative deadlines. And I think they have done a good job.

Mr. FARR. I think we need to build some confidence into the system right now, that if we could build that confidence, we could subvert some of the lawsuits that I think have been filed and may be filed. And let me just give you an example. Little Pajaro Valley in Santa Cruz County, right on the—Pajaro River runs into the ocean, we have big salt water intrusion problems there. We get all our water right out of the aquifer.

The best alternative the water management district has looked at is essentially honoring the contract that they have entered into for 19,000 acre feet from the CVPIA. But because they are sort of the last in that, they have not gotten their commitment. And with the EIS, I mean, they are told, "Well, we don't know whether we can honor that 19,000 acre feet," and so they are left in this incredible dilemma that the best solution for them is now tied up in essentially administrative delay.

I mean, that is a common sense approach. They have got a contract out there. It is not for a heck of a lot of water, but we need to somehow find a resolution to a problem like that before the ocean beats them to the punch.

Another question I would like to ask to Dan Nelson is essentially the CVPIA currently allows the Secretary to reduce the refuge water allocations by up to 25 percent. In times of drought or in other water shortages, the bill changes the discretionary authority to a mandatory duty if there is a shortage. And then the Secretary must reduce refuge allocations.

The question I have is why do you think that that change is necessary for agriculture? And if indeed we are trying to base our decisions on science, then how much water would be necessary for agriculture in situations like that?

Mr. NELSON. First of all, to put that into context, the shortage provisions that are in 1906 for refuge supplies, you have to under-

stand that south of the delta we have chronic water shortages, and that the CVPIA in the context of conveyance problems south of the delta essentially reallocated about 200 to 250,000 acre feet of water once used for agriculture to refuge supplies.

Not only did it reallocate water from agriculture for the refuges—a direct reallocation, but it also prioritized the wetlands used, capping their shortage provisions at 25 percent while agriculture can go down to as low as zero percent and did indeed go down to 25 percent during part of the drought and as a result of the ESA.

I think what agriculture has done has acknowledged the importance of the Pacific Flyway and has always supported water for wetlands. Essentially, what they are looking for is some balance and reasonableness. They think that by capping the 25 percent shortage provision to the refuges in drought years is reasonable.

And this is also in the context of category four water which is in addition to the ongoing level two water that we have capped the shortages. And so what I think it is, it is an acknowledgement and a confirmation that water for the wetlands is good and should be maintained, and I think it is a reasonable approach.

Mr. FARR. So I am not sure. Are you supporting the discretionary approach or the mandatory approach?

Mr. NELSON. The mandatory approach.

Mr. FARR. OK.

Mr. NELSON. In addition to that, let me say that we are working with and have had developed good dialog with the refuge people and anticipate continued discussions.

Mr. FARR. In closing, Mr. Chairman, it just seems to me, you know, there is really a fairness issue, and that is if you are going to be in a drought, everybody ought to have to sacrifice something. And I think one of the ways you try to do that is bringing in best water management practices as well.

When agriculture is doing it, I am very proud of the fact that California agriculture has almost led the world in it. I mean, Israel came here and learned from us; went back there and improved on it. But California was where water practices began, and we ought to not lose sight of the fact that we need to continue to do that. And hopefully then we will survive all kinds of droughts.

I am lastly wanting to know about—it seems to me that we have never utilized our water policy with our land policy. In California, we have the Williamson Act. We have given tax breaks to agriculture as long as they commit themselves to remain in agriculturally zoned lands. And yet we have never adjusted water pricing to say that lands that are so dedicated ought to receive at least the fairest or cheapest price for water because we know that they have made a long-term commitment to be in agriculture.

Maybe we ought to adjust, Mr. Chairman, in your bill where Mr. Beard says we may need some structural water pricing changes. I would like to see us build incentives in so that our land policy is consistent with our water pricing policy. Any response?

Mr. DOOLITTLE. The time is limited, gentlemen.

Mr. SMITH. Mr. Chairman, I would like to make sure that reliability for urban areas is part of that same equation on pricing. Pricing should reflect reliability of supplies.

Mr. FARR. We will suggest that if those cities would put urban limit lines so that they would preserve agriculture and keep urban sprawl. What I see happening is you can buy water for agriculture and then turn around and use that water for houses, and I don't think that is fair public policy.

Mr. SMITH. I agree.

Mr. DOOLITTLE. OK. We would like to thank the witnesses. Yes? Well, we have got two other panels to go. Is it your desire to have a second round of questioning?

Mr. MILLER. It is, Mr. Chairman. Under the rules, we are entitled to question each of the witnesses, and I would request my rights under that rule, as with any other member who wants to do so.

Mr. DOOLITTLE. OK.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Quinn, can you lay out for me, and some of it is hit upon in the combined testimony, but your view on the long-term contracts and the renewal of long-term contracts? In this case, we would specifically talk about agricultural contracts, and then we can go to municipal contracts if you would like. But, first, what your view or what your coalition position is on those contracts?

Mr. QUINN. We have two principles, and let me start with the observation we don't think anybody has come up with the right words yet as far as we are concerned. Our two principles—first is water supply certainly for entities suppling water to an economies that depend on a sustained long-term supply. We are sympathetic with the notion that there should be renewals assured by the Congress for people trying to meet urban or agricultural water supplies. So on the one hand, we think it is appropriate for the Congress to establish a policy that says, "Your economy will have the water that it needs over the long-term."

On the other hand, and the more difficult portion from our perspective, is we think it is imperative that the terms and conditions of those contracts are changeable over time to reflect the needs in agriculture, urban, and environmental circumstances at the time of renewal.

So what we are looking for is a process that on the one hand provides assurances to a local economy that it will have the water supply part of its infrastructure over the long-term, and on the other hand that the terms and conditions of those contracts will be changeable so that they can reflect, as necessary, changing circumstances in the future.

Mr. MILLER. When you say changeable, you mean as to what?

Mr. QUINN. As to all terms and conditions in the contract—price, quantity, other provisions. We would generally like to see language that allows change in a flexible manner, recognizes the importance of change without very many restrictions on what could be changed in the future.

Mr. MILLER. As I understand the language currently, it would change it from a discretionary power of the Secretary to renew the contracts to a mandatory renewal after the first 25 years? Under the law now you would get 25, and then it would be discretionary at that point. Under 1906, they would turn that into mandatory. So that is inconsistent with——

Mr. QUINN. We believe that it is necessary to add to that some process that will assure that there is adequate ability to change terms and conditions of contracts when they are, in fact, renewed.

Mr. MILLER. One of the intents obviously was to try to bring water law and the authority to deal with the diversity of the State of California in terms of water users so that we could make contemporary decisions based upon contemporary knowledge and situation.

And that obviously includes the ability to move quantity, but it is very difficult to see how you do much about quantity in urban areas where you have people who are down in three-bedroom, two-bath homes, with all due respect, and using water for daily sustenance of themselves. We could go through water conservation and all that, but eventually you are talking about sustaining human life.

And so the question starts to become where is the shock absorber in the system? It is in the environment. It is in agriculture. Because although it obviously impacts farmers, families, and communities, at some point it also gets down to the question of whether it is cotton or melons or whatever the various agricultural products of California.

The keeping open of the Secretary or at some point down the road perhaps it will be the governor or the director of water resources if the nature of this project changes—that flexibility it seems to me to be absolute paramount in terms of the future water needs and the competing needs of the State of California. Do you agree or disagree?

Mr. QUINN. Well, let me clarify that from Metropolitan's perspective looking from the outside of the CVP service area to the inside. One of the areas we are looking to for flexibility is voluntary transfers, and in that respect, this argument cuts both ways. If we negotiate for a transfer, generally longer term transfers under some circumstances are desirable, and we basically would think we ought to be subject to the same criteria as a transfer if we acquire a long-term water supply.

On the one hand, we would like to know that to some degree we will be able to count on that water supply. At the same time, we are amenable to the notion that we should be subject to changing terms and conditions under which that supply is delivered in the future.

Mr. MILLER. But at some point the water supply—if I enter into a long-term transfer with you in the first year of my 25 years and you get a 25-year transfer, that is long-term. But at some point in the next 25 years should I really still be empowered to be the middle man, if you will, the middle person here to convey that water which many of your taxpayers already paid for?

Mr. QUINN. Well, I think ultimately——

Mr. MILLER. I mean, now I am no longer a farmer selling you my water. I am talking about renewing my annuity.

Mr. QUINN. The first part of our position, Congressman, is that we don't think it is appropriate to go to a local area and say, "And we might cut your water supply off in its entirety in 25 years." We have got a 75-year contract for state supplies that is renewable. We have got no term in our Colorado River supplies. We are willing to

live with changing circumstances and have put our money where our mouth is in the last decade and will continue to do so.

But we think you ought to stop short of sending a signal that, "You might lose your water supply in its entirety in the future." Therefore, assurances of some sort of contract subject to appropriate changes in terms and conditions is where we would like to see the process come down.

Mr. MILLER. Well, that is my point. And I guess my point is as I read what you say the Urban Coalition position is, that not only includes quantity, but it also states that that provision that you would support is not in this legislation?

Mr. QUINN. We do not believe that the legislation currently adequately addresses our principles.

Mr. MILLER. Thank you.

Mr. DOOLITTLE. OK. Mr. Quinn, do you believe that water districts will be induced to transfer water when the Secretary has discretion not to renew their contract after that one-time, 25-year renewal as contained in the CVPIA?

Mr. QUINN. Well, we certainly don't want it to be the case that agreeing to transfer with us would put your long-term water access at risk. You will chase a lot of sellers away that way; again, consistent with the answer I tried to give Mr. Miller.

Mr. DOOLITTLE. Well, my question is if water districts that have a right to water are thinking about engaging one of these long-term transfers but it turns out they don't really know whether they are going to get renewed, it seems reasonable to suppose they may be inhibited from entering into such transfers. What do you think about that?

Mr. QUINN. Well, I think that is a concern.

Mr. DOOLITTLE. Therefore, one could conclude we need to change that provision within the existing CVPIA. Correct?

Mr. QUINN. Yes.

Mr. DOOLITTLE. And that is what H.R. 1906 attempts to do. Do you agree with the provision that H.R. 1906 contains; the reference to the change made in the renewability of those contracts?

Mr. QUINN. In our view, there are two key principles. H.R. 1906 accomplishes the first. We are not certain yet that it accomplishes the second. We will likely include suggested language in our response to Mr. Radanovich and others in terms of what kind of changes we would like to see to fulfill our principles adequately.

Mr. DOOLITTLE. Now, Mr. Beard, you said the CVPIA was enacted or its first year was in a drought year. But, I mean, we have had a six-year drought. I think the bill was actually enacted in a drought year as reasonably foreseeable—in fact, there are many I think who believe that notwithstanding the huge precipitation of this current year that we are in that actually we are in a period of dry years.

Should that be the case, I mean, the CVPIA has got to be able to contemplate those kinds of years. We have heard we have got chronic water shortages south of the delta anyway, and we have got to make it work. So I am a little bit concerned that that is being used as the justification for not having made further progress here because I think—I mean, I hope I am wrong, but I am afraid

we might have more dry years than we are going to have wet years in the future. And I guess that is an observation to you.

And the question I would have of you is, since we are going through this second round of questioning here; in the next round of questioning we are going to hear from Friant, and in their written testimony the representation is made that even though tiered pricing isn't in effect yet because, as you indicated, it doesn't go into effect for several years, that the Bureau is requiring this now at the district to grower level, and that the Bureau is requiring approval of the district's conservation plans. Can you comment upon those things?

Mr. BEARD. Well, one of the things that we have tried to do is work our way around the—let me back up. We recognize that the tiered pricing as laid out in the statute may not be the best way to handle the problems at Friant. So what we did in the water conservation criteria is require the district to put into place a pricing mechanism which would promote conservation—referred to as a tiered pricing mechanism to promote conservation.

Now, if we find, through the experience with our plans, that that is not the most effective way and that it is counterproductive, we are certainly willing to go back and look at our criteria and make sure that they are effective. We have required about 114 conservation plans, and we have received about 89. Twenty-five of them really don't need to send us a plan yet, and we have approved 49 of the 89. We are currently in the process of dealing with the other 40.

We are gaining experience every day on the use of things like pricing mechanisms as a means to promote more efficient use of water. The Friant representatives will have an opportunity to testify on that when they come up in the next panel. I think it is the next panel.

Mr. DOOLITTLE. Well, I guess I would just ask since the CVPIA doesn't require nor I believe authorize that, why are you doing that?

Mr. BEARD. Well, the CVPIA is going to require it in long-term contracts.

Mr. DOOLITTLE. Well, I understand that, but that is in 1998, you testified. Why are you making them do it now?

Mr. BEARD. Because price is certainly a very strong inducement to promote conservation and improve water management. And if these are conservation plans, they lay out our suggestion for approaches on ways in which the districts can achieve conservation objectives. Now, pricing is one way to do that.

Mr. DOOLITTLE. I question why the Bureau is taking these measures that go beyond the requirements of the law. I will recognize Mr. Dooley for his questions. OK. Mr. Dooley passes. Mr. Radanovich.

Mr. RADANOVICH. One short question. I have got a question for you, Mr. Beard, regarding administrative changes and administrative fixes, and it centers around the 800,000 acre foot definition of what constitutes a credit toward that dedication to the environment.

And I would like to refer back to a hearing we had in Sacramento on CVPIA recently. I believe it was in April, and, of

course, Mr. Patterson was there, but we had discussion about what really did constitute a credit toward the 800,000 acre foot allocation. And it was almost like a game of who is on first, you know.

You know, questions may have also included things like, "Does this constitute a credit toward the 800,000 acre foot?" "Well, I don't know." "Is it light or dark outside?" "Is this Saturday or Tuesday?" or, "Did you have a bagel or toast for breakfast?" You know, it was almost like those kinds of requirements. You had to ask those types of questions in order to find out if it indeed was a credit to the 800,000 acre feet.

There is a lot of misinformation. There is a lot of disagreement as to what constitutes a credit on that 800,000 acre foot allocation. And if you believe in administrative fixes, could you propose to me how you could clarify that then?

Mr. BEARD. Well, I think the simple answer to your question is you are right. When the statute was passed, it says that the use is for the purpose of primary wildlife habitat but also could be counted for other uses such as Bay-Delta water quality and endangered species.

And we think that the process that we have proposed for this year, working with all the people in this room to try to put together something that is reasonable, is going to be an effective process. It is our best effort to try to make it work this year. We are going to learn from this year. It may be that there are changes we are going to have to make, and procedures that we are going to have to change, and calculations that we are going to have to change.

Listen. I have been about as frustrated as everybody else in this room over the 800,000 acre feet because it is not an easy thing. In a general sense, it represents an expression that we need to commit water for certain purposes, and that is understandable. The question of how do you do it and how do you account for it becomes the more difficult one.

Mr. RADANOVICH. All right. Thank you.

Mr. DOOLITTLE. Mr. Pombo is recognized.

Mr. POMBO. Just to follow up, Mr. Beard, it is my understanding that water districts are required to come up with the water conservation plan. What authority does the Bureau have to issue water conservation plans and to implement water conservation plans?

Mr. BEARD. You mean to approve the plans?

Mr. POMBO. To draw them up, to approve them.

Mr. BEARD. Well, we don't draw them up. We have drawn up guidelines on what has to be in the plans.

Mr. POMBO. For the districts? In their water conservation plans, are they suggesting the tiered pricing as a water conservation measure?

Mr. BEARD. Yes.

Mr. POMBO. Or did that come from you?

Mr. BEARD. No. It is in the criteria that we specified what ought to be in a plan. The Congress passed legislation in 1982 directing that every district that receives water from Reclamation put forward a water conservation plan. And then in the CVPIA it goes further, laying out more specific requirements for districts receiving CVP water.

And then the inevitable question from the contractors is, "OK, what are the rules of the game here? You have got to tell us what do we have to put in here?" because the usual argument is what constitutes an acceptable plan.

Mr. POMBO. In the law does it say that you have to accept the plan, that the Bureau has to accept the plan? Or does it say that the district has to come up with a plan? Because it was my understanding that it—and I may be wrong on this-but it was my understanding that nowhere in the law does it say that the Bureau has to accept the plan.

Mr. BEARD. Does it state in words that we must then, in turn, approve the plans? I don't see that here right now, but I would like an opportunity to answer for the record if I could.

Mr. POMBO. I would appreciate that.

Mr. BEARD. Sure.

Mr. POMBO. Because what you are saying and what is happening out there doesn't exactly fit with what I understood. I would like to go to Mr. Nelson. I had asked a question before about legislative fix versus an administrative fix, and he requested the opportunity to answer that, and I would like to give you that opportunity.

Mr. NELSON. Well, actually, it was more to the 800,000 acre feet in the context of legislative versus administrative fix, and I don't think that there is a clearer example in why it is we have to have legislation. I would like to put the 800,000 acre feet into perspective.

Despite popular belief, the 800,000 acre feet isn't allocated out of 8 million acre feet of CVP yield. As a practical matter and as the dust settles on the implementation of CVPIA, there is about 2.2 to 2.3 million acre feet of CVP contracts that are on the hook for not only the 800,000 acre feet, but Trinity River and the refuge supplies.

To say that we need flexibility in determining the 800,000 acre feet, frankly, is a great example of why we need legislation. We don't need flexibility. We need definition because right now we don't have even general agreement on the concepts involved in the 800,000 acre feet. On the notion of crediting, what can we credit, what it is intended for, what it isn't.

And essentially we have at limbo out there a significant portion of a large group of water users' water supply, and the uncertainty is unacceptable. And, again, I think that that is a prime example of why it is we need legislative fix as opposed to administrative fix.

Mr. POMBO. Thank you. And, Mr. Beard, for the record, I would like you to respond, that by what specific authority can the Bureau require increased prices for water conservation plans for people who have a contract based on their water rate?

Mr. BEARD. Sure. I would be happy to do so.

Mr. POMBO. Because what you are doing and what you are saying is contrary to what I have read, and I am a little bit confused as to how you can do what you are doing or under what authority. So, thank you, Mr. Chairman.

Mr. DOOLITTLE. OK. Yes. Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. Mr. Nelson, the question that I put to Mr. Quinn on the terms and conditions of contract renewal, could you explain your position?

Mr. NELSON. Yes. We think that we would like to be on equal footing with the other 80 percent of the water users in the State of California who don't have to go through such contract renewals, that through their water permits under the State of California that that is essentially where their water rights are held.

And I guess I am a little bit baffled at why it is we think we need to hold at bay not just 20 percent of CVP's water—I mean, excuse me, 20 percent of the state's water which is the CVP supply—why we have to hold that aside as opposed to the other 80 percent of the users in the State of California.

There are still mechanisms, Congressman, on being able to move this water around within our contracts to meet the future needs of California. We don't need to put a cloud of uncertainty over contract renewals. There are a lot of other uncertainties in California water.

Mr. MILLER. Those other mechanisms being what?

Mr. NELSON. The other mechanisms being water transfers, regulatory——

Mr. MILLER. Outside the district?

Mr. NELSON. Pardon?

Mr. MILLER. Outside the district?

Mr. NELSON. Outside the district. That is correct.

Mr. MILLER. Would you give the districts a veto on that?

Mr. NELSON. We would give the districts the power to review that, absolutely. There are certain third party impacts that we all agree——

Mr. MILLER. We understand the power to review that. What about the power to approve that or the power to veto that?

Mr. NELSON. Yes. I think so. I think that that is the appropriate vehicle for review of transfers is the local community under specific guidelines.

Mr. MILLER. I understand that. Would you give them the power to veto that?

Mr. NELSON. Under——

Mr. MILLER. Who would make the decision whether the water transfer would go forward or not?

Mr. NELSON. Under agreed-upon guidelines, I think it is reasonable that the local districts make that decision and do have veto power. Yes.

Mr. MILLER. And have veto power?

Mr. NELSON. That is correct.

Mr. MILLER. Mr. Quinn, would that be consistent with your view?

Mr. QUINN. Well, we don't like the V word. As I said in response to a question earlier, we think the district has an appropriate role in approving transfers as long——

Mr. MILLER. We would stipulate that. Should they have the veto power of whether or not water can go outside of the project and outside of the district?

Mr. QUINN. We think if you put together a transfer that satisfies the criteria as specified, it ought to be difficult for the districts to say no. So, no, we are not comfortable with an outright veto.

Mr. DOOLEY. Would the gentleman yield to me a minute?

Mr. MILLER. Yes.

Mr. DOOLEY. Mr. Quinn, if I understand, in your written statement, or maybe it was in your verbal statement, you said that you would support the district review subject, that you also had the criteria, plus you would have the option for an appeal. What might constitute a veto?

Mr. QUINN. We want criteria of appeal, and we want the requirement that the districts create programs if their landowners request them to. We think those three things will create a functional mechanism for transferring water.

Mr. NELSON. I would like to point out that what we have done here once——

Mr. MILLER. That is not the arrangement that Mr. Nelson anticipates.

Mr. QUINN. I guess we would like the opportunity to come to a common arrangement.

Mr. NELSON. And we would be open to that. I would like to point out that we are, once again—this is another good example. We have taken 20 percent of California's water supply and essentially pointed out that we are going to deal with you differently than the other 80 percent. One of the things that we have tried to do on this legislation specifically with transfers is to make it more comparable to the rules that other folks in the state are using to do water transfers.

Mr. MILLER. Mr. Nelson, with all due respect, that is the business of setting priorities. That is the business of setting priorities, and the reason we are dealing with 20 percent of the state's water supply is because that is the percentage that we have the authority to deal with under the Central Valley Project.

And, in fact, what you have is you have 80 percent of it locked into agriculture, and the question is will it be locked into agriculture as 1906 calls for in perpetuity. Or will we be able to look at agriculture at some point down the future and decide whether or not that is still the highest priority we have for 80 percent of the water. We have base closures. We have companies going out of business.

The economics changes all of the time, but it is highly unlikely that 32 million people are going to get up and leave this state over the next decade. And much of that water goes to the sustaining of human life and family income, as it does on the farm, but the question of how that water will be used.

So when you suggest that the districts should have the veto, that suggests that when you get down to the terms and the conditions of the contract at the end of the period, you better have the right to have some discretion as to whether or not you are going to continue to allocate 100 percent of the water as previously used in the 25 years, or do you get to reevaluate California's economy and its status and say, "Well, what we will do is we will give you 98 percent," or, "We will give you 70 percent."

That is the nature of priorities. It may be at some point that there will be a great move in the state, and they will say, "We are going to give every family in California 80 percent of what they used last year." That is kind of what went on in the Contra Costa Water District and the Metropolitan Water District and the San Diego Water District.

A lot of people are using 80 percent of what they used to use, and they are paying a hell of a lot more for it because of the priorities of trying to keep water where it returns the best use throughout the state. The State Water Plan has dealt with that. The Metropolitan Water District, Santa Clara, Contra Costa, East Bay MUD—they have all dealt with that.

And now the agriculture community is dealing with that. But what 1906 suggests is the hand is on 80 percent of CVP water in perpetuity, and that is simply inconsistent with the needs of every other sector of the California economy.

Mr. RADANOVICH. Point of order, Mr. Chairman.

Mr. MILLER. Pardon?

Mr. RADANOVICH. Point of order to the Chairman please.

Mr. DOOLITTLE. State your point.

Mr. RADANOVICH. If we are going to continue to go around and around on this, can we limit the time—bring it down from five to two minutes please?

Mr. MILLER. No, we can't.

Mr. DOOLITTLE. Well, the rules say if we go to another round of questions, which we are in—it is my intent to have this be the final round on this panel—the rules do say five minutes.

Mr. RADANOVICH. I would note the red light.

Mr. NELSON. Can I respond to the last statement briefly?

Mr. DOOLITTLE. Let me begin my time, and you can respond on my time. Go ahead.

Mr. NELSON. Thank you very much. I don't think by ongoing renewals of these contracts, Congressman, prohibit the movement of this water for future use in California any more than we anticipate there to be no movement of the other 80 percent of California's water. It essentially puts them on even grounds with the other 80 percent of California, and just the opposite. It allows for equal movement and equal opportunity for the movement of that water.

So I guess that is where we fundamentally disagree is by renewing these contracts doesn't prohibit the movement of that water. It puts them on equal grounds with the other 80 percent of the users in the State of California for the appropriate future use of that water.

Mr. DOOLITTLE. I would like to get back to the transfers of the water. The present law gives districts a veto over transfers involving more than 20 percent, does it not? All we are doing in this bill is indicating that the districts have the authority to give the approval over any amount. If they do not give it, they have to provide, subject to a list of criteria in the bill, reasons why the transfer would have an adverse impact which then can be challenged in Court.

So we are attempting to facilitate the transfer of water with the bill, not to inhibit it. And it seems perfectly reasonable that we take that tack since the testimony indicates that these transfers, in fact, have been inhibited since CVPIA in having to go through—there is a fairly long list of criteria set forth in the existing statute. And Mr. Nelson's testimony was that that had slowed down to 30 or 60 days what used to be done I guess in a matter of hours.

Mr. MILLER. Mr. Chairman, on that point?

Mr. DOOLITTLE. Yes.

Mr. MILLER. The discussion I was having is about out-of-project transfers outside the CVP to some other——

Mr. DOOLITTLE. I understand that, and he is talking——

Mr. MILLER. Permit no applications other than what is his name, Areias, as I understand it.

Mr. DOOLITTLE. But he was talking about even sort of the routine things that need to go on, that used to go on and have now been slowed down substantially through the Bureau of Reclamation having to go through this list of—I don't know how many there are here—it looks like about 13—criteria that have to be evaluated for each thing.

The tiered pricing—Mr. Pombo was getting into this. I guess I would like to. I realize the power between the Bureau and the district doesn't take effect until '98, but it seems to me, you know, in a year like this, you want to encourage districts to buy water and recharge their groundwater.

But now under the tiered pricing or in '98 under the tiered pricing that, in fact, will work just to accomplish the opposite result. Districts would have to pay incrementally more in order to do something that is environmentally responsible and so will be a disincentive toward improvement of the environment. And I think that is something that needs to be changed, and this bill does change it.

I am going to go, Mr. Beard, in my time here before we go to a vote to the representation. Apparently, the Bureau is requiring districts to demonstrate the negative, that the particular water conservation techniques are not effective. Are you aware of that going on, that you are requiring districts to demonstrate—they have the burden of proof, if you will, that certain techniques, in fact, are not efficacious for conservation? Mr. Patterson is shaking his head there.

Mr. BEARD. Yes. Why don't you go ahead?

Mr. PATTERSON. Yes. We are aware of that. We were given six months after this law passed to develop criteria; a very short time; done in a very public way; with tons of comments. The law says use best management practices. We worked closely with the State of California on what were best management practices that generally helped with water conservation and management; listed them in the criteria; told the districts to apply those, and if they didn't fit their situation, because we knew we would have that situation tell us why they don't. It was up to the District to show why they should not apply.

Mr. DOOLITTLE. Well, Mr. Patterson, let me just ask you if you would share this with us. I mean, have you ever tried to prove the negative on anything?

Mr. PATTERSON. There are districts that, in fact, have demonstrated why several of these don't apply. I think it can work better, but there have been many exceptions granted to the criteria because they didn't fit a certain situation. Can we do better? Yes.

Mr. DOOLITTLE. I would like to join Mr. Pombo's request, when you supply the justification for requiring approval of these conservation plans, show us where you have the authority to require districts to bear the burden of proof relative to demonstrating particular conservation practices that are not efficacious for them be-

cause this adds a tremendous burden to the district. OK. That is the end of my questions. We still are in a vote. Anybody else? Let us see. Now, that would be a fourth round of questioning. At this point, I think we have got to draw this to a close.

Mr. RADANOVICH. Mr. Chairman, how long is this going to go on?

Mr. DOOLITTLE. You have a right to ask questions. Do you want to ask any?

Mr. RADANOVICH. No. I don't want to ask any. The only question I have is how many times are we going to go around on this?

Mr. DOOLITTLE. All right.

Mr. RADANOVICH. We have got two more panels.

Mr. DOOLITTLE. All right. Under my authority as Chairman——

Mr. MILLER. Mr. Chairman?

Mr. DOOLITTLE. Yes, sir.

Mr. MILLER. Mr. Chairman——

Mr. DOOLITTLE. Mr. Miller.

Mr. MILLER [continuing]. under the rules, every member of the committee is entitled to ask questions of every witness for five minutes. I have one more five minutes left to me, and I would like to follow up with Mr. Nelson. I am prepared to do that before we go to a vote.

Mr. DOOLITTLE. Well, let me just clarify. Under the rules, as I understand it, it is discretionary of the Chairman as to the number of rounds of questioning we have got.

Mr. MILLER. Under the House rules, it states that each committee shall apply the five-minute rule to the interrogation of witnesses at any hearing till such time as each member of the committee who so desires has had an opportunity to question each witness. And the parliamentarian—we just went through this on the Education and Labor Committee. I am entitled, and what I would like to do is finish it. This is a very important matter as we all know, and what I would like to do is I would like to follow up with Mr. Nelson. I am more than happy to do it when we come back from the vote.

Mr. DOOLITTLE. All right. Why don't you do it now, and then we will go to the next panel.

Mr. MILLER. I want to go back to the contract because I really think it is the core of the issue here on renewal. The scenario that you lay out, Mr. Nelson, that you have both the veto on the transfers and a right to water quantity and renewal in perpetuity suggests that there is not much outlet for the reallocation of water should the people of the State of California decide that that should be done in the future.

Mr. NELSON. I would like to reverse that and ask you a question back if I may. How is that different from the other 80 percent of the water users in the State of California——

Mr. MILLER. Because of this fact, you know, and that is this: just as we reallocated resources in the Federal Government, we closed down bases in California, and people make those changes. In this case, it may come that because of the increase in population and our different economic growth in the State of California, you are going to have to rethink about the reallocation of that water.

The one place, like it or not, where some changes can be made in some cases with minimal hardship certainly than if you went

out to find 2.5 million acre feet of water in the urban sector, it is a much different situation as we have already done in conservation. So the question is you have an allocation that was based upon the California of the 1940's, and should that allocation remain in perpetuity?

And if you lock off with the veto power transfers and you have contract renewal and perpetuity, then that water is simply not available for reallocation. That was the situation we found ourselves in before the passage of the CVPIA. That is why the urban districts and the financial communities and others supported this kind of change because they believed that transfers was one of the ways, and long-term but discretionary renewal after the first 25 years was the other way to do that.

So if I understand what you are saying, I mean, you basically block off that 80 percent of the water because the other people in the East Bay Municipal Utility District or in Contra Costa as we have people who come and ask for more permits and those districts decide, they then decide they are either going to charge us more because they are trying to stretch out the water.

They make you use a smaller toilet, a smaller showerhead. They charge you more for irrigation water or for, you know, planting. The large homes in Contra Costa pay more than places in Berkeley and Oakland; where they have different climates and all of that. That is all going on to try to stretch that out of the urban area. I am just saying down the road I don't think California can be put in a straitjacket of allocations that were made in the 1940's. That is the dynamics of the economy, so to speak.

Mr. NELSON. Actually, California is under the straitjacket of a water allocation scheme that goes back, you know, to the mid–1800's when it developed its water rights and water allocation scheme in general. And I think at issue here is are we really locking up the current uses of this water by allowing for contracts to be renewed after 25 years? And my contention is that we are not locking up——

Mr. MILLER. But you are not allowing for modifications in quantity, are you?

Mr. NELSON. We will take a look at the different stipulations regarding the renewal of those contracts, but having said that, there is no other water user in the state that has to look at modifying their water use renewals other than through certain criteria under state law. We are willing to come under that same criteria. We welcome the opportunity to come under that same criteria. We aren't locking up this water through contract renewals——

Mr. MILLER. You are.

Mr. NELSON [continuing]. any more than 80 percent of the water any more——

Mr. MILLER. You have a couple of minutes left here, but you haven't shown me yet how any water escapes your system.

Mr. NELSON. It escapes the system in any other way it escapes any other system of the 80 percent of the other users.

Mr. MILLER. OK. So we made a determination. The national Congress passed on this. It was supported by an overwhelming majority in the State of California. It wasn't a consensus, and now the decision was made this is a vehicle by which water will be reallo-

cated. And you are saying, no, we want to go back to a veto and contracts in perpetuity.

Mr. NELSON. We want to go back to state water law the same way that other water users—the other way that—the same way that other transfers——

Mr. MILLER. But you never had more than a contractual right. You never had more than a contractual right.

Mr. NELSON. However, there must be merit. There must be merit for the renewals of other contracts of——

Mr. MILLER. If you want to turn it into a property right, that is different. But what you have is a contractual right. You went to law school.

Mr. NELSON. No, fortunately I didn't.

Mr. MILLER. You didn't? Well, that is why you don't understand. You have got property rights and contractual rights all mixed up. No, see, you have a contractual right for a period of time.

Mr. NELSON. But, Congressman, this is an issue of——

Mr. MILLER. And, you know, just like you lease your house, the landlord comes along and says, "Next time you want to lease the house, we are not going to let you have dogs," or, "We are going to raise the rent," or, "Those are the terms and conditions." If you have a mortgage, you don't go back at the end of your mortgage and say to the bank, "I want the same terms I wanted 30 years ago." There are new terms and conditions. Those are contracts.

Now, some people up north in Mr. Doolittle's area, they have different water rights. OK? They have different water rights. These are contractual rights. The state gave a permit so that we could create some contractual rights. And the question is are those contracts open to modification so they can be reviewed without determining the outcome, so they can be reviewed periodically so the state can choose some priorities and some allocations.

And the scenario that you are painting here is that cannot be done because you want those contracts in perpetuity, no discretion, and you want a veto over transfer rights. That means no water escapes the Central Valley users' portion of the water.

Mr. NELSON. Essentially, in 1906 it does review the price and the quantity within those contracts. Essentially, what we are doing is providing certainty to those water users on an ongoing basis so they can do long-term financing and do some of the other things that water users need to do.

Mr. MILLER. And their financing agents all suggested that this was allowable and doable and not a problem within the bill. Those were the people who were calling the——

Mr. POMBO. Would the gentleman yield to me? I know that your time is up, but would the gentleman yield to me on that? I think that you are correct in terms of contractual rights, but if your landlord came to you in the middle of the lease and told you he was going to give away half of your space to someone else who may give him more money, that would break the contract. And I think that part of what we are debating is whether or not contracts were honored through the process. And I know that you and I have had this discussion many times.

Mr. MILLER. I am talking about after the 25-year period is run.

Mr. POMBO. But we are also talking about during the time of the contract that the contract was not fulfilled.

Mr. MILLER. Well, they came to me in the middle of my contract and said I had to conserve water in my district. They said I was going to have to pay more for it. That is what every urban person in the United States went through.

Mr. DOOLITTLE. All right. Gentlemen, thanks to the Contract with America, we have got six minutes to go vote. We thank the witnesses, and the panel is excused. We will recess.

[Recess.]

Mr. DOOLITTLE. We will reconvene with panel two; invite our witnesses to come forward. We have on this panel Mr. Thomas J. Graff, Senior Attorney with the Environmental Defense Fund; Mr. Jeff Kerry, Vice President of Grassland Water District; and one soon to be up there we hope, Mr. Richard Moss, General Manager of the Friant Water Users Authority. And let us begin with Mr. Graff.

STATEMENT OF THOMAS J. GRAFF, SENIOR ATTORNEY, ENVIRONMENTAL DEFENSE FUND

Mr. GRAFF. Thank you, Mr. Chairman. It is a pleasure to be here today. Hopefully the length of the prior panel and the questions of the members mean that you are all done with questions when it comes to my testimony. I prepared lengthy testimony and squeezed it into your 12-page limit, and I will do my best to summarize it and just hit a few of the highlights. And then, of course, if you do have questions, I would be happy to try to address them.

The basic position we take today is that we believe H.R. 1906 is legislation that should not have been introduced and that it should not be passed. Now, before I go into specifics on why I believe that to be the case, I do want to call the committee's attention to my effort in my prepared testimony to go through some of the history of my own involvement and of the Environmental Defense Fund's involvement in California water over the last 20 plus years.

What I put all that in there for was to demonstrate that we have done, consistent with our basic mission, as much as we could to try to address the interests of other constituencies in the state, as we have advocated on behalf of our interests. We have seen merit sometimes in things that some others in the environmental community have not.

In particular, we went out alone, I would say, early in the 1980's on behalf of water marketing and water transfers with a more business-oriented perspective than was probably applauded by others within our community at that time, or pretty much by anyone else, and that I believe is something that now is embedded in the CVPIA. And what we are talking about now hopefully are fine points, while most of the interest groups in the state at least profess a commitment to water marketing.

Jumping then to 1992 and skipping over the rest of that history, I would have to agree with the statement that the Chairman of the committee made earlier today that it is correct that the CVPIA was not a consensus piece of legislation. It was, however, the product of a very broad-based coalition consisting of representatives of a very large number of groups within California and outside, includ-

ing most notably urban constituencies, big business constituencies, environmental constituencies, Native Americans, commercial and sport fishermen, duck hunters, wildlife enthusiasts, and others.

The one group that felt left out, as we have seen indicated here today, were the agricultural constituencies within the CVP. I would turn to my testimony, however, now and go over what I think are the three major benefits that the CVP agricultural interests got out of the CVPIA in 1992.

One, at the time the CVPIA was being debated, the complaints heard loudest from the agricultural contractors of the CVP involved the lack of certainty in CVP contracts, especially those surrounding CVP contract renewal. In response, the CVPIA established firm rules for long-term contract renewals. Remember, there was litigation going on at the time on contract renewal, and what the CVPIA did was say, "OK. For 25 more years, you are entitled to essentially what you have had, with changes only as prescribed in the law."

The second loudest set of complaints from the CVP contractors involved their fears of an open-ended potential liability for meeting apparently insatiable environmental water demands. In response, the CVPIA established what the direct environmental water contributions of the CVP would be, including an 800,000 acre foot annual dedication of CVP yield to fishery restoration, a firm-up of state and Federal refuge water supplies, and a confirmation of minimum releases to the Trinity River.

Otherwise, however, the Act left to a system of voluntary environmental water acquisitions and investments in environmentally oriented hardware the job of meeting the Act's environmental objectives.

Third, the CVPIA also produced a potentially huge economic benefit to the farmers who make up the CVP's core constituency by establishing the right, not just of the water district contractors but of their farmer constituents, voluntarily to transfer water at a profit. It did that at the same time though that it also raised their water rates by $6 an acre foot in the case of agricultural water users and $12 in the case of urban water users, that increment to go to the Restoration Fund.

Let me say in comment on earlier testimony today, this was an effort to increase the property rights in water in the state among those who would have the greatest incentive to conserve it if they also had the right to sell it. That is the farmers and growers and ranchers on the ground.

What troubles me about what I heard from Dan Nelson and Tim Quinn too, for that matter, although he wasn't quite as aggressive on this, is that they want to go backwards. They want to say, no, ranchers are not responsible; shouldn't be allowed to own water rights in this sense; shouldn't have a property right in water even within the contract limitation; this power should reside in the district, not in the individual farmer. That, it seems to me, is inconsistent with the whole trend of American resource policy, conservative revolution in American political life in a whole number of areas, and ought to be resisted.

As I noted, the CVPIA was the product of two years of intense legislative maneuvering and compromise.

Mr. DOOLITTLE. Mr. Graff, I don't mean to cut you off, but you need to be wrapping up here.

Mr. GRAFF. OK. Well, let me skip then right to the end. I think the key, and I suppose we will have more discussion of this later, is whether there is a possibility to make this into a consensus bill or not. And I think what a fair critique of the bill—an analysis of individual provisions is attached to our testimony—will demonstrate, is that the bill as it presently stands is all take and no give.

I challenge the representatives of the CVPIA contractors to demonstrate where in the bill there is something better for the environment than what exists in existing law. With that comment and my time having expired, I will stop. Thank you.

[Statement of Mr. Graff may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. Mr. Jeff Kerry is recognized.

STATEMENT OF JEFF KERRY, VICE PRESIDENT, GRASSLAND WATER DISTRICT

Mr. KERRY. Yes. Thank you. Mr. Chairman, members of the Water and Power Subcommittee, thank you for the opportunity to testify before you today. I am Jeff Kerry. I am Vice President of the Grasslands Water District. I am also Senior Vice President of the California Waterfowl Association.

I am testifying on behalf of the Grasslands Water District, California Waterfowl Association, the Tulare Basin Wetlands Association, the Oregon Waterfowl and Wetlands Association, and the Alaska Waterfowl Association. Accompanying me today are Dave Widell of the Grassland Water District and Bill Gaines of the California Waterfowl Association. Together, we represent virtually all of the wetland, waterfowl, sports interests on the Pacific Flyway.

The Grasslands ecological area is near Los Banos. This is California's largest remaining interior wetlands complex. I own approximately 288 acres of the land in that area. We, the Grasslands owners, are unique because we don't farm crops. We farm for wetlands, we farm for water birds, and we farm for ducks.

In order to provide viable wetlands, we need land, management, and, most importantly, water, timely delivered. If significant water is not available, the real users of these marshlands, the water birds and ducks, will, because of reduced carrying capacity, naturally die off or their ability to reproduce will be adversely impacted. Waterfowl populations from Alaska to Mexico and throughout the Pacific Flyway are affected.

Between 1960 and 1985, most of our water that was applied to Grasslands was contaminated by agricultural drain water and which eventually led to the Kesterson disaster. Finally, in 1993, the Central Valley Project Improvement Act provided wetlands and refuges in the San Joaquin Valley with a safe and adequate summer water supply for the first time in 20 years.

The results were very dramatic. Over 26,000 acres were irrigated, an increase of 650 percent over the prior seven years' average irrigations. Waterfowl food production increased by 300 percent. Almost 50 million pounds of waterfowl food were grown in the Grasslands resource conservation area alone. These are privately

owned wetlands. This amounted to 15 percent of all the wetland waterfowl food requirements for waterfowl in the Central Valley.

Bird use during the summertime irrigation and water use tripled. Currently, waterfowl populations on the Pacific Flyway are rebounding slightly. We believe very strongly that CVPIA refuge water supplies are one of the reasons for this increase.

CVPIA water supplies changed the situation on the ground. With these waters, Grasslands is able to provide 3,000 acres of early migrant waterfowl habitat. This is from August to September. 55,000 acres of these privately owned wetlands now has a firm, dependable water supply. We can manage our marshes at a shallower level over longer periods of time which maximizes our wetland habitats. Shorebird use in this one year when we had summer irrigation increased by 20,000.

Although we don't know yet to what extent these improvements will increase the Pacific Flyway waterfowl populations, we know for certain that the existing waterfowl population that has access to better and more suitable habitat and increased food supplies will prosper. We know that the birds returning to the breeding grounds are in much better condition. Clearly, natural habitat with its high food values is superior to poor quality substitutes such as sewage treatment plants and agricultural evaporation ponds.

240 species of birds utilize the Grasslands wetlands. Less than 30 of these species is hunted. Typically, the hunting season last year ran 53 days. Typical hunt days in the Grasslands are three days a week, and, therefore, we use our property about six percent of the time for its purchased and maintained use—duck hunting. The other 94 percent of the time it is habitat home, resting and breeding habitat for waterfowl along the Pacific Flyway.

These wetlands are privately maintained. Expenses are paid by the individual landowners without burdening taxpayers. We need water of adequate supply and good quality to be able to support Pacific Flyway waterfowl. The Central Valley Project Improvement Act has been a significant and substantial benefit to waterfowl and to sporting interests in the State of California. We do not want to see these refuge provisions weakened because we know they work.

We have some serious concerns regarding H.R. 1906. We also want to point out that this bill contains improvements in the treatment of habitat and refuge. It has improvements over earlier drafts. In particular, the bill maintains guaranteed delivery of at least 75 percent of contracted water for refuges. However, we believe that further changes are necessary.

It requires the Secretary to reduce water supplies to Central Valley refuges and habitat areas up to 25 percent whenever reductions are imposed in agricultural water service contractors. This reduction could be devastating for California wetlands. Under this provision, it would occur when water conditions in the Central Valley are at their very worst.

With only five percent of California's wetlands remaining, every acre in the Central Valley must be managed intensively to create the benefits of a larger and historic wetland base. In some drought years, a temporary reduction in water supplies could be devastating. Birds migrate from the north. They migrate whether they have water or not. If we don't have the water, the ducks will either die

off or return to their nesting areas in poor shape. There is no planning for alternative. Water birds need water.

We are not insisting on a guarantee of more than 75 percent, but, rather, we are saying that the Secretary should be able to maintain his discretion to provide a reduction. Mr. Chairman, we would like to refer to our written testimony in regard to other changes to H.R. 1906. I can touch on them briefly.

Mr. DOOLITTLE. Actually, I think your time is up, but we have your full statement, and it will be included in the record.

Mr. KERRY. Fine.

[Statement of Mr. Kerry may be found at end of hearing.]

Mr. DOOLITTLE. I might note at this point we have as well the statement of Representative George Radanovich and, without objection, will be included in the record.

[Statement of Mr. Radanovich follows:]

STATEMENT OF HON. GEORGE RADANOVICH, A U.S. REPRESENTATIVE FROM CALIFORNIA

One of my goals as a Member of Congress is to provide security for the farmers of the Central Valley. I am convinced that H.R. 1906, the Central Valley Project Reform Act, will accomplish this objective by clarifying and making needed adjustments to the Central Valley Project Improvement Act (CVPIA). It is important to note that H.R. 1906 will not repeal the CVPIA; it will simply reform this law.

The CVPIA is badly in need of reform. Despite the claims of some of its supporters, the CVPIA was not developed by consensus. The interests of agriculture were not adequately taken into consideration when it was written.

Some opponents of H.R. 1906 say that reform legislation is unnecessary since administrative changes can solve the problems associated with the CVPIA. I find such statements disingenuous. If administrative changes could accomplish the needed reforms, why have they not yet been enacted more than three years after the passage of the CVPIA? It is clear that only legislation can fix this law.

H.R. 1906 is limited in scope. It will retain key environmental provisions of the CVPIA while making common sense changes to see that these provisions are actually effective and workable. It is clear that key environmental provisions of H.R. 1906 are not working. Under the CVPIA, water users have annually provided for environmental enhancement. Despite these great sacrifices, supporters of the CVPIA can point to few, if any, environmental improvements that can be attributed to this law.

H.R. 1906 will continue to require farmers to contribute to the CVPIA Restoration Fund. However, this reform legislation will increase the flexibility of the CVPIA by permitting more of these funds to be used on physical fixes. This will benefit the environment by allowing the proceeds of the Restoration Fund to be used for more innovative environmental solutions.

This reform legislation will make other needed changes to the CVPIA's environmental provisions. H.R. 1906 will clarify that the 800,000 acre feet of CVP water dedicated for environmental improvement will be credited with water taken for Endangered Species Act and Bay-Delta Accord purposes. H.R. 1906 will also broaden the CVPIA's program of doubling the anadromous fish population in the Central Valley by making it part of a statewide fish doubling project.

My gravest concern with the CVPIA is its call for a fishery study on the San Joaquin River. H.R. 1906 would terminate this study. The salmon fishery on the upper San Joaquin River disappeared almost fifty years ago. Any attempts to reestablish this fishery would take inordinate amounts of water from farmers and would likely devastate the economy of the Central Valley. Even Secretary of Interior Babbitt has admitted that such a study would be a waste of Federal money. Under H.R. 1906, the San Joaquin fishery study will be replaced by the requirement that the Federal Government and the State of California cooperate with local governments to take steps to mitigate environmental changes in the San Joaquin River.

I would like to emphasize that H.R. 1906 will not disrupt the Bay-Delta Accord. Agriculture played a key role, along with urban and environmental interests, in crafting of the Bay-Delta Accord. Farmers remain committed to seeing this historic agreement implemented.

In closing, I would like to express my gratitude for the willingness of Senator Diane Feinstein to approach the possibility of reforming the CVPIA with an open mind. While Senator Feinstein and I differ on many political issues, I know that she shares my concern about the importance of providing security for the farmers of Central Valley. Senator Feinstein has patiently listened to all sides in the CVPIA debate, and I know that her ultimate decision on this reform legislation will be based upon what she believes is best for the State of California.

Mr. DOOLITTLE. And Mr. Moss. We introduced you, Mr. Moss, before you sat down, but we are glad to have you here, and you are recognized.

STATEMENT OF RICHARD M. MOSS, GENERAL MANAGER, FRIANT WATER USERS AUTHORITY

Mr. MOSS. Good afternoon, Mr. Chairman and members of the committee. I very much appreciate the opportunity to appear before you today. My name is Richard Moss, and I am the General Manager of the Friant Water Users Authority. The Friant Water Users Authority is a joint powers authority comprised of 25 member irrigation and water districts along the east side of the southern San Joaquin Valley. All of these districts receive at least part of their water supplies from the Friant Division of the Central Valley Project.

The Friant Division supplies water to a large part of Fresno, Tulare, Kern, and Madera Counties. These counties respectively are the number 1, the number 2, the number 3, and the number 7 producing counties in the Nation in terms of agricultural product. The Friant Division is populated with small family farms in excess of 10,000. We grow principally high value crops of citrus, nuts, grapes, and stonefruit.

This region is truly a unique region. It is unique in its combination of soils, water, climate, and talented people. Because of its unique attributes, this area must be preserved and protected. There has clearly been a Federal role in the development of the region, and there will continue to be a Federal role in assuring the long-term productivity of the region.

Much of what I describe to you here today especially in terms of the suggested changes to the San Joaquin River provisions of the CVPIA go toward this notion of preserving and protecting this unique region.

Let me first address the San Joaquin River and Friant Division provisions. Section 6 of the Central Valley Project Reform Act calls for a rewrite of the CVPIA, wherein the Federal study of the San Joaquin River, known as the San Joaquin River Comprehensive Plan, is replaced with direction to the Secretary to assist the State of California in the implementation of a number of specific provisions.

Much of this section of the CVPRA deals with the implementation of the results of the state mandated review on the San Joaquin River recently completed. Many of the specific measures identified by the CVPRA are to enhance the viability of the existing salmon run on the San Joaquin River and were pulled from this recent state review.

Clearly, the suggestion of the CVPRA to move to begin the implementation of the results of this already completed study will have far greater environmental value than to have the Federal Govern-

ment independently, and, quite frankly, to date very inartfully, try to regenerate its own analysis of what needs to be done on the San Joaquin River. We need action there, not more study.

The consensus that has been building behind abandoning any effort to try and reestablish the remnant salmon fishery that existed on the Upper San Joaquin River before the construction of Friant Dam in the 1940's has been overwhelming.

Virtually everyone who has taken a serious look at the availability of the limited resources and the tremendous benefits of the current use of the waters of the San Joaquin River within the Friant Division has reconfirmed the original analysis by Congress. There is not enough water to have both a viable salmon run, salmon fishery below Friant Dam, and to provide the water necessary to take advantage of the tremendous agricultural production which exists within the lands of the Friant Division.

I have brought with me today and would ask to be included in the official record copies of articles documenting the public concern principally from last summer in regards to the hearings that were held on the San Joaquin River Comprehensive Plan.

It is a number of newspaper articles and editorials from the San Joaquin Valley that document this concern and also the public remarks of Senator Feinstein and Interior Secretary Babbitt in regard to the reestablishment of a salmon fishery below Friant Dam. I have also included some articles relative to the renewal of contracts.

The CVPRA will reconfirm that it is in the national interests to ensure that water will continue to flow to the Friant Division service area by prohibiting releases from Friant Dam directly into the San Joaquin River.

Let me clarify, however, that the Friant Division water users are not absolved by virtue of this language from fully participating in all other aspects of state or Federal law which would apply to any other water user in the State of California. In fact, you have gone to great lengths in addressing this concern in the language of the CVPRA. Friant water users have always been willing to do their fair share of environmental restoration and improvements, just not at the extraordinary expense of having to reestablish flows below Friant Dam.

Another CVPIA issue near and dear to my heart is contract renewal. One of the most potentially devastating provisions of the CVPIA that would garner little, if any, environmental benefit was the provision regarding the renewal of existing long-term contracts.

Not only did the CVPIA prescribe an interim renewal process which by virtue of its implementation to date has been unreasonable, but also injected the notion that the Secretary had some new level of discretion as to whether or not he or she would, in fact, renew these contracts. We have had quite a bit of discussion about that already, but I would be pleased to address that issue as well in any questions that you may have.

In closing, let me sum up what I see as the true value of the CVPRA. Passage of the CVPRA will return CVP water users to a position of far greater certainty as to their water supply and to their obligations to restore and approve the Central Valley's environmental values. Greater certainty will allow these water users

the flexibility to be creative and productive in helping to address California's current and future water management problems.

Successful passage of this legislation will clearly add to the environmental value of the CVPIA by making an unworkable law workable while solidifying the baseline from which future changes to water management in California can be expanded upon. Thank you very much for the opportunity to appear here today.

[Statement of Mr. Moss may be found at end of hearing.]

[CVPIA news articles were placed in the hearing record files of the subcommittee.]

Mr. DOOLITTLE. Thank you. Mr. Moss, I was quoting from some of your testimony in addressing my questions to Mr. Beard, but will you share with us your experience with the Bureau of Reclamation in terms of these water conservation plans and conditions and so forth that are being imposed upon you of tiered pricing, even though that is not——

Mr. MOSS. Well, it is and it isn't. I was interested in the comments that were made earlier relative to the application of tiered pricing under the CVPIA provisions as part of the interim renewal contracts.

We were given somewhat of a Hobbes choice in the interim renewal process of either agreeing to include within our water conservation plans provisions for having district to grower conservation requirements in our conservation plans, or reverting back to the 801010 kind of tiered pricing approach that was mandated for the long-term renewals.

It was an either/or situation with relatively little flexibility in terms of how the districts or whether it was appropriate for the districts to have tiered pricing in their contracts at all.

The development of the water conservation criteria was a very frustrating process. We thought we were going to have significant input into the development of that criteria since basically it was the districts who were going to have to implement all of it. We didn't. It ended up they listened but they didn't hear, and we ended up coming out with criteria that we found to be very objectionable.

And I think you are seeing the same criteria now applied westwide and are hearing howls from other states as to its appropriateness. Again, the one-size-fits-all notion of water conservation criteria just doesn't work.

Mr. DOOLITTLE. And what has your experience been with having to demonstrate that certain practices are not efficacious for conservation?

Mr. MOSS. The districts are going through that process right now in the approval of their plans, and it has been something that has, quite frankly, hung up the approval of those plans considerably. Again, the idea that you have to prove the negative has been very difficult and, quite frankly, has set what I believe to be the wrong tone for cooperatively working on reproving water conservation.

Again, you have to consider that most of this area is already water short; doing an excellent job of managing their water; has had water conservation as a high priority for many, many years. Drip irrigation originated out of the Friant Division of the CVP. You will still find many of the original developers of that technology home right there in towns like Lindsay and Delano and Ba-

kersfield. Water conservation is not something new to our area, and then to have some onerous provisions in the criteria foisted upon us was very distasteful.

Mr. DOOLITTLE. What has been your experience with water transfers? Mr. Nelson testified these have been inhibited since the CVPIA took effect. Have you found that to be the case?

Mr. MOSS. Relative to transfers within Friant, they have occurred fairly easily and readily. What raised the original concern was in the development of the guidelines for water transfers that the Bureau was developing as part of the CVPIA. They came out in the determination of those guidelines that all transfers would have to be subject to the provisions in the CVPIA.

Clearly, that wasn't what we believed Congress intended. We thought Congress wanted to be additive to the capabilities of transferring water. Well, the Bureau came down with the solicitor's opinion that said, no, the existing ability to transfer water expires with the expiration of the existing contracts. Thus, all transfers are going to have to be run through the CVPIA process. We think clearly that is not a workable situation on the long-term.

The fact that that process hasn't caught up yet with our transfers at Friant I have trouble explaining. But the fact is that if that process which they believe mandated by law were to come into place, it would make transfers at Friant unworkable.

Mr. DOOLITTLE. Well, Mr. Miller is not a witness, but he is one of the authors. Maybe he will comment upon that. I wouldn't want to speculate as to what his intent was, but it does seem as though that is a strange result—apparently though the result of the Bureau's own interpretation of it.

Do you believe the 800,000 acre foot reservation for environmental purposes is a good thing under the CVPIA?

Mr. MOSS. Yes. We continue to support the 800,000 acre foot reservation as is currently being interpreted under the Bay-Delta Accord.

Mr. DOOLITTLE. Is certainty important to your customers in terms of their being able to run their businesses and meet their obligations?

Mr. MOSS. Very much so. Again, what we are talking about principally in the Friant Division is plantings of permanent plantings. You don't have an option from one year to the next as to whether or not you are going to have water for your trees, and they die in one year, and you are talking about replantings and regeneration of fruit that would probably take on the order of eight to ten years before you are back in full production. You just can't work with that kind of uncertainty.

Additionally, there is a lot of infrastructure, if you will, needed to grow permanent plantings from the irrigation systems and the trellises all the way up to the packing houses and the like that are needed. You don't do that kind of construction, that kind of investment without having long-term certainty that you are going to have a water supply.

Mr. DOOLITTLE. Thank you. I would suggest we go vote—to recess and then come back and resume the questioning.

[Recess.]

Mr. DOOLITTLE. The hearing will reconvene. Mr. Miller is recognized.

Mr. MILLER. Getting swamped by testimony here but, Mr. Moss, in your discussion of contract renewal and terms and conditions, do you include water quantity?

Mr. MOSS. In terms of as part of the right to renew? Yes.

Mr. MILLER. Yes what?

Mr. MOSS. Yes, that the contractor should have a right to renew for the same quantity of water as long as they have shown and continue to show that they can beneficially use that water. Beneficial use should be as is provided for, and state law should be the measure of the right.

Mr. MILLER. So quantity is not one of those that would be negotiable at the end of the term absent that showing?

Mr. MOSS. Not unless the contractor wanted to reduce their quantity or increase it, for that matter.

Mr. MILLER. Mr. Graff, can you explain to me the implications of the renewal and the transfer provisions under 1906?

Mr. GRAFF. Well, taking renewal first, my understanding is that existing law essentially grants mandatory renewal with minimal qualifications for a 25-year period, but thereafter renewals become discretionary. H.R. 1906, as I understand it, requires mandatory renewals indefinitely or basically in perpetuity.

As far as transfers are concerned, there are more changes, but the one that is most troubling is the one that eliminates the ability of growers, farmers, ranchers within a district to transfer up to 20 percent of that district's water supply without an effective veto on the part of the water district board.

Mr. MILLER. Now, under the one transfer that was applied for, the owner of that operation, that was unchallenged, right, and is currently challenged or has just sort of gone by the wayside?

Mr. GRAFF. Well, it is hard to get a complete story about what has happened. I think what has happened is that MWD has gotten cold feet. I am not sure of this because, as I said, you can't get a complete answer, but I believe they are committed to the seller in that case, former Assemblyman Areias, to pay him the amount to which he is entitled. But whether they are going to proceed to completion of the actual transfer is unclear.

I mean, as you heard Mr. Quinn, they seem to have been intimidated by the outcry that resulted from that effort and are now withdrawing to a position where they appear to have given up on the idea of user-initiated transfers.

Mr. MILLER. I mean, that doesn't bode well for the notion of a district veto in terms of facilitating transfers?

Mr. GRAFF. Well, I guess they have got sort of a reverse psychology about it. I mean, I am just trying to read into what they are doing—what they think they are doing anyway—is they think, "Well, this got vetoed anyhow so we might as well acknowledge it in the law and give up."

Mr. MILLER. Well, let me just say that—well, never mind.

Mr. GRAFF. If I might, just to complete my thought, I do think that in the long run if you really want transfers to work as a water management tool, you can't get away from user-initiated transfers. The real conservation incentive and the profit incentive are going

to come from the individual user. The water district boards, and this includes water district boards on the buyer's side I think ultimately as well as the seller's side, are going to set up bureaucratic obstacles to making transfers really work as openly as would be ideal for purposes of making water use in the state efficient.

Mr. MILLER. Well, if that is the case, then that raises even more concern about the notion of contracts in perpetuity without quantity being on the table.

Mr. GRAFF. Well, my view on this is—the place where I think Dan Nelson goes wrong in saying we ought to be treated exactly like the other 80 percent is that the Federal 20 percent is indeed different, in that the taxpayers have put an immense investment into that part of the water supply.

It is true, as he points out, that there are other water users in the state who are much better situated than the Federal users in that they have gotten water rights historically that are free, and they are free to do with them what they want, including transfer them.

Mr. MILLER. But, you know, that is something that the political priorities in the state will have to sort out.

Mr. GRAFF. Could change eventually, possibly.

Mr. MILLER. Could change. You know, I guess that is the old transition from rural to urban. I wanted to ask you also on this linkage between a reduction in the agricultural service area and reduction in the wildlife refuge water. And I wanted to ask Mr. Kerry. Maybe you can answer now and then I can go to Mr. Kerry on the second round.

And one of the things we learned in the drought was the drought started a lot earlier for fish and wildlife and habitat than it did for all the rest of us in terms of human consumption or farming or what have you in terms of the impacts that had to be dealt with.

Mr. GRAFF. One of the concerns, and this also goes to the fishery issue, is that H.R. 1906, as I understand it, would require the reduction by 25 percent of both waterfowl refuges and wildlife refuges and the 800,000 acre feet of fishery dedication water, if any ag contractor is shorted. Given that essentially, at least by my judgment, the Bureau of Reclamation in most years is going to short at least some contractors, that effectively reduces both supplies by 25 percent—both environmental supplies.

Mr. MILLER. One of the testimonies started out here talking about based upon good science, the linkage between what goes on in an agricultural use of the land and what goes on in a refuge. You know, making these mandatory reductions in law can't be based upon good science. The two uses simply aren't linked. I will wait and go to Mr. Kerry next. Unless you want to let Mr. Kerry answer, and then I will be done. I mean, whatever you want to do.

Mr. DOOLITTLE. OK. Let us do it. OK, Mr. Kerry. I will go for that deal.

Mr. MILLER. Yes. I wanted to just on that point, you obviously have similar problems with this linkage where reductions would be automatic and mandatory if an agricultural service had some reduction because of the declarations of the Bureau as to a drier, critical year or shortage, what have you?

Mr. KERRY. Yes. When you have a drought year, what happens is that the usual places where water is is not available in the Pacific Flyway. You have these birds that are going to come from the north no matter if there is a drought or if there is a lot of water. So at that time, it is very, very critical to get as much water out as possible. What I am saying is that that reduction sometimes isn't acceptable, but we would consider allowing the Secretary to go ahead and make that decision, but we don't want it mandatory.

Mr. MILLER. Well, you are saying a reduction on refuges ought to be determined by the condition and the needs of the refuge, and that shouldn't be linked to whether or not you have three cuttings of alfalfa or two cuttings of alfalfa allowed or you allow corn or you allow melons, that you have got to look at the refuge and the needs of the refuge and linking the two, you know, maybe puts some political resistance in reductions. But the fact of the matter is they are not for the same purpose?

Mr. KERRY. That is right. Just say, for instance, the Secretary says, "OK. There is going to be a reduction of 15 percent," but there shouldn't be an automatic reduction of 25 percent. What we are saying is that if you have a lot of birds coming down the flyway, it is most important to get as much water out as you possibly can.

Mr. MILLER. Secondly, on page eight, you talk about and I was wondering if you would just elaborate on—you say the bill eliminates a requirement of funding necessary to deliver these wetland water supplies be reimbursable and earmarking 67 percent of the fund for habitat restoration improvement and acquisition.

Mr. KERRY. I am going to allow Bill Gaines, our Director of Governmental Affairs, to answer that. He is with the California Waterfowl Association.

Mr. GAINES. Yes. I am Bill Gaines, the Director of Government Affairs for the California Waterfowl Association. Would you repeat the question please?

Mr. MILLER. Yes. In your testimony on page eight in the second to last paragraph, you state that H.R. 1906 makes funding of the restoration fund more tenuous in two ways. The bill eliminates the requirement for funding necessary to deliver these wetland water supplies be reimbursable and the earmarking of 67 percent of the fund for habitat restoration improvement and acquisition. You see that as what? You raise that as a concern. I want to know why that is a concern.

Mr. GAINES. Our main concern with the changing of the funding for the level two water supplies from reimbursable to nonreimbursable is that by taking those out of the Restoration Fund and putting them to where they have to be paid out of taxpayer dollars, our belief is that that is going to raise the risk associated with whether or not that money will be available in any given fiscal year.

Even if the water may be available, the money may not be available for one reason or another, whether it be budget cuts or so forth. And we don't think that that is something that we want to face. We have got the risk of having a wet year versus a dry year year in and year out. We don't want to face the risk associated with

the financial side of things. We would like to see that level two funding stay as reimbursable.

Mr. MILLER. Those historically were what? Those were nonreimbursable on Bernie Sisk's theory that there was nowhere to send the bill—nobody to send the bill to—the ducks and the fish and what have you? All right. Thank you. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. OK. Let us see. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman. Mr. Moss, do you agree with Secretary Babbitt's assessment in October of '94 that the amount of water required to restore and sustain the San Joaquin River fishery would clearly go beyond the reasonable, prudent, and feasible criteria of the law itself?

Mr. MOSS. Yes, I do.

Mr. RADANOVICH. Would you care to expand on it? Well, in conjunction with that—expand on that and this other statement, and that is if you can give us an idea of the terms of the impact on the agricultural communities that have resulted from an uncertainty in long-term water supplies that resulted from even the declaration of this study?

Mr. MOSS. Well, to answer your last question first, that was clearly demonstrated during the workshops that were held by the Fish and Wildlife Service and the Bureau of Reclamation in consideration of the San Joaquin River Comprehensive Plan where in a series of five workshops we had over 5,000 people, not just farmers but barbershop owners to truck dealers, to, you know, the person that, you know, flips the hamburgers come out and be represented. Some of them, you know, testified for the first time in their life on an issue.

Clearly, the public in the Friant Division was able to clearly draw a nexus between the potential of losing water down the San Joaquin River and their jobs, and that potential exists along these lines. The San Joaquin River doesn't have enough water to support both the salmon fishery and continued agricultural production in the Friant Division. We have water supplies which have ranged from about 350,000 acre feet up to, you know, the full contract amounts of 2.2 million in the past.

If we were to try to keep a fishery alive in a dry year where we only have like we had in '93 and '87, '88, and '89 less than 100 percent of our what we call class one supplies or less than 800,000 acre feet. And you take 4 or 500,000 acre feet out of that for a fishery, you are talking about reducing your available supply in those years which would have to be considered a very short year even further—taking half of it. And the year that we only had 350,000 acre feet, if you take, you know, that much for a fishery, then you are taking all of the water supply.

And you have to recognize that on the San Joaquin River currently water is kept in the river below Friant Dam to a point called Gravelly Ford. Gravelly Ford is where the last riparian diverter on the river exists. And the reason it is called Gravelly Ford is for one reason, and that is because it sucks up a lot of water.

In order to get water beyond that point, you have to put more water in. Our analysis is that it would take for every acre foot you want to get to Mendota Pool, for example, which is only 15 miles

downstream from Gravelly Ford, you would have to put in two. It is a 50 percent loss.

To get water from Mendota Pool all the way down to the confluence of the Merced where you would have to have another—I think that is another 50 miles—45 miles—something like that—from the pool to the confluence of the Merced, you are talking about considerably more water—rewetting a channel that hasn't been run on a regular basis for 40 years. The losses would be considerable; again, something probably in excess of two to one.

So anytime, you know, you figure out what you need for salmon just in terms of flow, you have got to double that in terms of what you have to take out of the Friant supply.

Mr. RADANOVICH. All right. Thank you. Also to comment I think on the mere consideration of the study created a lot of uncertainty and affected land values and also the ability of the farmers to get loans. Just due to the fact that it was being studied created conditions that were unreasonable, unprudent, and unfeasible in the San Joaquin Valley is the point I wanted to make.

Mr. MOSS. Yes. That is clearly the case. Not only the San Joaquin River study but the overall controversy surrounding the renewal of contracts. There clearly has been a situation where buyers have stopped. I have talked to brokers where they said they were in the middle of deals; the stuff came up; controversy surrounding whether they would have continued available water supply and what the terms and conditions of those contracts would be, and the deal stopped. It clearly has affected land values throughout the Central Valley.

Mr. RADANOVICH. All right. Thank you very much. Mr. Graff, I have got a question with regards to any possible input that you may have had during this CVPRA process. Were you indeed invited to participate in this, and did you feel as though you were shut out of the process of CVPRA? Or did you choose not to participate in the process, and, quite specifically, were you asked to participate?

Mr. GRAFF. I think the fair answer to your latter question is yes, although the process was pretty well launched by the time Jason Peltier and Dan Nelson, in particular, came and paid a visit, I think, on me and a few other environmental representatives.

Mr. RADANOVICH. OK. Thank you. I think my final question would be do you think that there has been an improvement or maybe a raising of consciousness of those people that use resources for farming and such over the last 20 years? Has there been an increased awareness on say perhaps of Dick Moss's part over 20 years?

Mr. GRAFF. It has come with some——

Mr. RADANOVICH. Hard work?

Mr. GRAFF [continuing]. hard work, yes. I would answer yes.

Mr. RADANOVICH. OK. Thank you.

Mr. DOOLITTLE. OK. Mr. Dooley is recognized.

Mr. DOOLEY. Thank you. Mr. Graff, on the Bay-Delta Accord, was EDF in agreement with that and supportive of that?

Mr. GRAFF. Yes.

Mr. DOOLEY. And were you also supportive then of the provisions that relate to the disposition of the 800,000 acre feet?

Mr. GRAFF. We supported the whole accord including that provision.

Mr. DOOLEY. Then what would you specify as the difference between what H.R. 1906 has in it in terms of 800,000 acre feet and the Bay-Delta Accord? What is the fundamental difference there that would cause you to oppose it in H.R. 1906, but not oppose it in the Bay-Delta Accord?

Mr. GRAFF. Well, there are other things that impact the 800,000 acre feet besides just the one provision that you are referring to. But the principal difference is that the Bay-Delta Accord has a three-year life, and H.R. 1906 is indefinite.

Mr. DOOLEY. So if the Bay-Delta Accord was for longer than a three-year period, you wouldn't have supported that agreement?

Mr. GRAFF. Well, it depends on what the rest of the accord was. That was one of the provisions we gave up effectively in the course of negotiating our part of the accord. We said, "OK. We will agree for the three-year life of this agreement that the dedicated water from CVPIA can be used to meet Bay-Delta standards initially rather than what the law really requires, which is that it go for the primary purpose of doubling." But to make that kind of a concession extend beyond the three-year life of the accord, it depends on what else is involved.

Mr. DOOLEY. Mr. Kerry, there has been some references that H.R. 1906 removes some of the minimum water that was going to be provided to refuges that was a part of the CVPIA. Do you think that is a correct statement?

Mr. KERRY. Yes, it could be because it makes it mandatory that there is a reduction if agricultural——

Mr. DOOLEY. In the CVPIA though, what was the minimum amount of water that it ensured that you would get?

Mr. KERRY. I will turn that over to our Director of Government Affairs for CWA, Bill Gaines.

Mr. GAINES. In the CVPIA, of course, there is a 25 percent cap on temporary reductions to the refuges of level two water supply. That is correct.

Mr. DOOLEY. So in no way does H.R. 1906 reduce the minimum amount of water that was provided in the CVPIA?

Mr. GAINES. You are correct, that it does not reduce it. That is right.

Mr. DOOLEY. OK. Well, the issue is this.

Mr. GAINES. It doesn't reduce the floor.

Mr. DOOLEY. The issue is that in the CVPIA, if there was a minimum amount of water, it gave the Secretary the discretion in those years of shortages that he could reduce it 25 percent. The only absolute guarantee was the same guarantee of the minimum amount of water that is included in H.R. 1906. So the fundamental difference here is whether the Secretary would be mandated to impose a 25 percent reduction when he is reducing water to some other contractor within that same division.

Mr. GAINES. Right.

Mr. DOOLEY. I guess, then, that is an issue where there can be some disagreement. And, in fact, the characterization in the letter that Mr. Miller sent to the President which basically stated that

there was no guarantee on the minimum amounts of water to refuges—that we were in fact eliminating that—that is incorrect.

Mr. Moss, we are struggling in terms of the transfers and the impact on that, and the relationship to the right of a renewal of a contract.

Mr. Quinn testifying, on behalf of some of the urban users, referenced the point that if he was going to be interested in transferring water even outside the project, if the contractor doesn't have an absolute right to a quantity of water even beyond the expiration of that contract, it certainly would reduce his interest in engaging in a long-term contract for transfer.

Mr. MOSS. I would assume so, and I think he agreed to that as well. And as somebody who engages regularly in buying water on behalf of our districts, that certainly would be the case. Nobody wants to do a deal if it is going to get jerked out from under them in a couple of years.

Mr. DOOLEY. Now, obviously in the Friant, and your situation might be different than in some others, but when you look at 20 years, where do you think the most water is going to be transferred? Do you think the greatest volume of water is going to be transferred from ag to urban, or would you guess it would be from ag to ag?

Mr. MOSS. Over the next 20-year period, I would say it is clearly going to be ag to ag. I mean, we have basically now still permanent water shortages on the west side of the Valley in particular. They will be in the market each and every year for considerable quantities of water.

Mr. DOOLEY. And the concern that some people have in terms of the districts having the right of veto over that, could you perhaps explain why you think the districts should have that right of veto? And I would also be interested to know if you would at this point support some type of appeals process to some other body that could review the merits of that appeal?

Mr. MOSS. What is contained in H.R. 1906 I think was somewhat of a tradeoff, and it followed these lines. The 20 percent minimum that was required that districts didn't have the veto on was replaced with the idea that districts do have that veto power, but recognizes that that could only happen under a certain set of established criteria.

We certainly would be open to the notion of having somebody review that for appropriateness, and we would certainly believe that if we were inappropriate in applying that criteria that the issue could be clearly taken to the Courts. Whether the Secretary is appropriate to do that review or not, I would be hesitant to say at this point in time.

I think what Mr. Quinn was expressing relative to the Areias transfer was clearly the recognition that you just can't roll the local communities, that they are going to be involved in these decisions one way or the other, and that to try to do that just doesn't make a whole lot of sense, and that is clearly their recognition.

My understanding relative to that transfer, by the way, is that it is progressing, only this time they are in negotiations and discussions with the district as compared to with the individual. So my understanding is that transfer will probably go forward under the

right set of circumstances, clearly after Met has done some rebuilding, if you will, of good will with the community.

Mr. DOOLITTLE. OK. Mr. Farr is recognized. And I will just note then we should be concluded with this panel, and then Mr. Riggs, whose written statement was admitted, is going to testify, and we will have him go after Mr. Farr completes his questioning.

Mr. FARR. We should bring in Mr. Roger Thomas of the Golden Gate Fishermen's Association. I wanted to follow up on something that Mr. Kerry said, and he was indicating the flyway and the fact that the water allocations was really dependent on something that was out of the control of—which was the essentially migratory bird population.

It seems to me that it just shows how complex this whole issue is; how you supply enough environment for a migratory bird pattern that is dependent on conditions totally unrelated to the migratory birds. Isn't there more of a science that you need to have than just a percentage of water allocation? Do we have enough sophistication with knowing the migratory bird patterns to know when those flocks are going to be large or when they are going to be small? Just like dry years and wet years, are there big years and lean years?

Mr. KERRY. Yes. For instance, this year looks like a banner year for waterfowl. There will be a lot of birds coming down.

Mr. FARR. When there is a lot of water there is a lot of birds?

Mr. KERRY. No, not necessarily.

Mr. FARR. Is it the opposite? When there is no water there is a lot of birds?

Mr. KERRY. Oh, yes. You could have great conditions in Canada let us say, and most of our birds come from Canada. And you could have very poor conditions here, and you would have a lot of birds coming on no water.

Mr. FARR. Do we know enough science—I don't know if you are the one to answer that—maybe Fish and Wildlife would know—but is there enough science where we could—I am only saying this because all the weather data in the world is collected in Monterey at the Fleet Numerical Weather Station.

It has got a Cray computer in there. It is incredible how they can now micromanage the weather data where they can really tell you down to, you know, and we ought to be using that data for, you know, civilian uses. And it seems to me that perhaps our collective science knowledge would allow us to also play a role here, and what all of this discussion is about is how do you have enough water to do what you want to do?

Mr. KERRY. Well, migratory birds, especially ducks and geese, are the most monitored animal that there is, and so we know when there is a good year. Like, for instance, your seasons are going to be set probably sometime in August. They have predictions of populations already. But what I am saying is, yes, we will know when you are going to have banner years for wetlands.

Mr. FARR. Well, aren't you suggesting in that that there is a more sophisticated way of determining what your water needs are than just an allocation formula?

Mr. KERRY. Yes.

Mr. FARR. And yet that is not built into the formula? It is not built into the Secretary's in the bill, is it?

Mr. MILLER. Would the gentleman yield?

Mr. FARR. Certainly.

Mr. MILLER. The way the bill is written because it has nothing to do with what is going on in the farmland or what needs to happen or not happen. For the most part, people will need a restricted amount of water to support what we anticipate for the particular year at that time.

Mr. FARR. Well, that is the point I am getting at, and I am——

Mr. MILLER. I would say share of the burden, but the language is not relevant——

Mr. FARR. Well, what I am suggesting for all of us is that perhaps there may be a more sophisticated formula than we have used to date rather than this sharp percentage of water allocations.

Mr. GAINES. Right. That is exactly what one of our major points at this stage of the game is, that somehow we need to get the discretion back with the Secretary, that in a year when we have—typically, what happens, and I am not a weather guy, but from what I understand, when we typically have a dry year down here, for some reason it is wet up in the Canadian prairies and so forth where the bulk of these birds breed.

And 60 percent of the Pacific Flyway, that is 20 to 25 percent of the continental waterfowl population, depends upon wintering habitat in the Central Valley. We had 4 million acres historically. Now we have got about 300,000 to 350,000 acres. It is critical that we manage those as best as we can to maximize their wetlands values and functions.

When we have got large populations of birds coming down in a year when it has been a dry year down here in the Central Valley, it is critical that somehow somewhere in this CVPIA or the CVPRA legislation that the Secretary has the discretion to beef up water supplies up to 100 percent even in a dry year if, biologically, that is something that we need to do. There has to be some science in the equation. There is no question about it.

Mr. FARR. And how much does agriculture have to give up on that?

Mr. GAINES. Level two supplies, as most of you I am sure know, are historical water deliveries. They are not firm water rights. They are historical water deliveries. Level one is firm water rights. So that water has always been with the refuges. There is no question about that. So the real question here is the difference between level one and level two water.

Now, the Service, as a result of the environmental assessment that was required due to the Westlands lawsuit last year and some other instances, has gone back and taken a look at what was called out in the refuge water supply investigation as level one water. It turns out that that level one requirement or that the level one quantity I should say is a lot higher than it was actually depicted back in 1989 when the refuge water supply investigation was completed.

At that stage in the game, the incremental water to get you from level one to level two, which would be the CVP water that would have to be reallocated from other uses, in a worst case I believe the

number was somewhere between 250,000 and 300,000 acre-feet. The information that I have seen out of the Fish and Wildlife Service just within the last couple of months says that in a worst case we are talking about 136,000 acre feet.

That is the entire Central Valley, and that is water that would have to be reallocated away from other users to make up that level one to level two requirement. But in actuality, that number is a lot smaller than that because, as I mentioned earlier, the level two water supplies, although they are not firm or at least prior to the CVPIA they were not firm, they were historical.

So a lot of that water is coming to the refuges anyway so as a worst case, you have got 136,000, but the actual number in any given year, and, of course, it would depend on the weather conditions and the rainfall and so forth, but in any given year, it would likely be considerably less than that.

Mr. FARR. Well, part of this issue is certainty.

Mr. GAINES. That is right.

Mr. FARR. And it seems to me that we ought to be using more data for certainty earlier in the decisionmaking process so that everybody knows ahead of time what is expected. What I think what people don't like is, you know, expectations that are denied.

Mr. GAINES. Yes. You mentioned certainty, and certainty is a big issue for the farmers, and we understand that, and we can appreciate that. It is also an issue for we that farm for ducks, so to speak. Knowing how much water we are going to get going into a certain year allows the various refuge managers and the landowners to plan out exactly how they are going to farm their wetland vegetation if you call it that. And it can make a tremendous amount of difference.

Some of the results that we have seen that have come out over the past two and a half years have tremendously increased the wetland food production on those lands because they had the certainty to plan out ahead of time just how they were going to irrigate the lands.

Mr. DOOLITTLE. The gentleman's time has expired.

Mr. FARR. Half a minute?

Mr. DOOLITTLE. OK. How much of this can be adjusted administratively, and how much of it has to be done legislatively?

Mr. GAINES. Well, we believe that all of it can be done administratively.

Mr. FARR. Thank you.

Mr. DOOLITTLE. All right. We thank the members of this panel. As with the other panel, we will have some additional questions we will submit in writing and would ask you to respond expeditiously to those. And with that, we will call up panel number 3, and we will just ask you, Mr. Riggs, why don't you just lead off with panel number 3. And you can make an introduction if you would care to do so. We did incorporate your written testimony already so feel free to summarize or abridge or whatever you would like to do. We are glad you are here.

STATEMENT OF HON. FRANK RIGGS, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. RIGGS. Thank you, Mr. Chairman. I am delighted to be here in this vast and intimidating hearing room. Mr. Chairman and members of the subcommittee, I am testifying before you today because of the extreme importance of this legislation to my 1st Congressional District in northwest California. I want to thank you for the opportunity to testify regarding H.R. 1906, the proposed Central Valley Project Reform Act of 1995.

I, perhaps better than most Members of Congress—given the fact that I represent a district that sprawls over 400 miles from the Sasoon Bay to the Oregon border—appreciate and understand the importance of water issues in the western United States and the strong emotions that water allocation issues evoke. I understand there were some strong emotions evoked here earlier today. That is probably a testament to just how controversial these issues are, certainly for Californians.

As the California congressional delegation's majority member on the Appropriations Subcommittee on Energy and Water Development, I recently played a significant role in the fiscal year 1996 budget deliberations. While our overall bill was $2 billion less than the Administration had requested, I am pleased to report to you today that we were able to provide significant support for operations of the Central Valley Project, as well as for a number of related programs that will benefit Central Valley water users.

Mr. Chairman, I want to thank you and the other sponsors of this legislation for continuing the spirit of cooperation that existed during the budget process. I particularly appreciate your sensitivity to the interests of my congressional district and your efforts to address our concerns. While we obviously are not in the Central Valley, we are certainly affected by the Central Valley Project.

I had, at the outset of the deliberations on this bill, a particular objection to a provision in an earlier draft that would have effectively vitiated an amendment I authored to the Central Valley Project Improvement Act of 1992. That was approved in the 102nd Congress with strong bipartisan support. I might add that was during my previous service in the Congress, before my sabbatical. I did support that legislation and, in particular, the provision of the CVPIA that is critically important to my district.

That provision calls for preparation of an environmental impact study to determine the effect of the Trinity diversion on native fisheries. This provision effectively codified a decision by former Interior Secretary Lujan, based on preliminary results of a long-term study of anadromous fishery restoration, to raise the minimum instream flow releases into the Trinity-Klamath River System from the CVP's Trinity River Division.

It was my intention to take future decisions regarding flow regimens in that river system out of the political arena by providing that when the long-term study is completed, which is expected to be 1996, flows could be adjusted by the Secretary of the Interior.

The earlier version of this legislation might have eliminated the Secretary's authority to implement a future flow regimen based on the long-term study. Furthermore, the bill could have led to a Fifth Amendment claim for damages to Indian reserved fishing rights.

In consideration of these concerns, the bill has introduced has been modified significantly, and for that I thank you. The most significant addition to present law would be a requirement that the Secretary's recommendation may only be implemented through a rulemaking process conducted in accordance with the Administrative Procedure Act.

While my personal view is that this extra precaution is superfluous because of the opportunity for public input already built into the process, I recognize its importance to those who want to guarantee that all sides are given a full hearing before the final flow recommendations are implemented.

There are other provisions of H.R. 1906 which remain of concern, Mr. Chairman, and cause me to reserve judgment on the bill. Let me preface this portion of my remarks by submitting for the hearing record a news story that appeared in the July 3, 1995, Santa Rosa Press Democrat which is the major daily newspaper in my congressional district.

This article headlined, "Big Year for Salmon Industry," tells of "huge catches by commercial and sport fishermen along California's North Coast. Most of these fish come from the Sacramento River and its Central Valley tributaries. The large catch is attributable to the conservation measures that have been put in place over the past three years." In fact, the gentleman that I am going to introduce in just a moment, Pliny McCovey, just told me that we could look forward to increasing runs in our critical fisheries on the North Coast over the next three years.

However, this resource is fragile, and salmon stocks are just beginning to rebound. The article which I am submitting for the record today demonstrates why it is so important for Congress to move cautiously on any legislation that might impact fishing stocks.

Among the provisions leading to my misgivings about the current legislation are changes affecting the 800,000 acre-feet of CVP waterflow dedicated under the CVPIA to fish, wildlife, and habitat restoration, the elimination of sustainable anadromous fish doubling as a major purpose of the CVPIA, and changes to implementation of the fish doubling provision.

Mr. Chairman, in concluding my remarks, I am going to submit for the record a statement prepared by the Pacific Coast Federation of Fishermen's Associations which discusses these concerns in detail. I also ask that you give careful consideration to the testimony presented to you today on behalf of my constituents, the Hoopa Valley Tribe, as represented here today by Pliny McCovey, my good friend, the Vice Chairman of the Tribal Council.

Mr. Chairman, I am hopeful that your committee will be able to address these matters in the course of the legislative process and maintain the balance that the CVPIA seeks to achieve. I know that you personally are committed to working with other interests, as you have worked with me, and to continue to improve your legislation. Again, I thank you for the opportunity to testify today.

[The article mentioned and statement of the Pacific Coast Federation may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. I should at this time introduce the other members of the panel, and then we will go to Mr. Thomas

for his testimony. Roger Thomas is President of the Golden Gate Fishermen's Association. And he will be followed by Pliny McCovey representing the Hoopa Valley Tribe, and then Stuart L. Somach representing the law firm of De Cuir & Somach, and I believe he represents the Northern California Water Users Association. So with that, Mr. Thomas, the time is yours.

STATEMENT OF ROGER THOMAS, PRESIDENT, GOLDEN GATE FISHERMEN'S ASSOCIATION

Mr. THOMAS. Good afternoon, Chairman Doolittle and members. My name is Roger Thomas. I am President of the Golden Gate Fishermen's Association representing the commercial passenger fishing vessel owners in northern and central California. GGFA represents some 70 vessels carrying approximately 200,000 recreational anglers yearly to the bays and offshore fishing areas.

In addition, our fleet is deeply involved with beneficial activities such as San Francisco Police Department Children's Fishing Programs, donated trips to the Leukemia Society of America, and trips to disabled and handicapped organizations and veterans. We are an affiliate member of the Pacific Coast Federation of Fishermen's Association.

In addition, we are a charter member of the Central Valley Fishermen's Coalition which represents six of California's largest commercial and recreational fishing organizations, two farming organizations, one waterfowl organization, and two environmental organizations.

The CVPIA was signed into law in 1992 and provided the first real reform in 50 years of this massive reclamation project. The CVPIA is aimed at reforming operations of the Central Valley Project which decimated salmon runs of the Central Valley and Trinity River.

Some examples of the past destruction done by the CVP include: Sacramento winter-run stocks fell from a spawning population of 120,000 fish in 1969 to only a few hundred today as a direct result of the CVP operations from delta pumping and blockage of fish at the Red Bluff Diversion Dam. This run of salmon are now listed as endangered under the ESA.

The listing of the winter-run fishery has caused a large financial loss to commercial and recreational fishermen, many small businesses, and the economy of coastal communities. This resulted because of the severe season regulations and restrictions imposed because of the event of the ESA listing.

The once plentiful San Joaquin spring-run salmon are now extinct as a direct result of the construction and operation of Friant Dam on the San Joaquin River. This spring-run of salmon at one time was the largest run of salmon in California. San Joaquin fall-run salmon are at extremely low levels and possible candidates for listing under ESA.

Millions of baby salmon from all runs are lost each year at the CVP pumping plant in the delta. Trinity River salmon and steelhead have declined as much as 85 percent following construction and operation of the CVP's Trinity unit, diverting most of the flow of that north coast river from running west to the ocean to east through the mountains to the Sacramento River so that power

can be generated five times through water on its way to the Sacramento River.

This has affected river sport and tribal fisheries and is responsible, in part, for the massive closures of ocean fisheries, both recreational and commercial, off northern California and southern Oregon to protect remnant Klamath-Trinity runs of salmon.

Losses of Sacramento fall-run salmon, the mainstay of the commercial and recreational fishery, accounting for an estimated 75 percent of California's and 50 percent of Oregon's salmon harvest have never been fully mitigated as a result of the construction and operation of Shasta Dam on the Sacramento River, Red Bluff Diversion Dam, and Folsom Dam on the American River and other delta diversions.

GGFA is opposed to any changes at this time to the CVPIA for the following reasons: Number 1, we do not feel that the 1992 law has had an opportunity to be implemented to date and is, therefore, too early to be making any changes until an evaluation on the implementation has been completed. Number 2, if any changes are necessary to the CVPIA, this should be accomplished administratively through a consensus-based process of all stakeholders.

Number 3, the December 15, 1994, Bay-Delta agreement requires implementation of the CVPIA. Number 4, fishermen were not invited to the negotiation table regarding changes as indicated in H.R. 1906, but we do now have a meeting set up for July 24, next Monday, with the Central Valley Water Project Association to discuss these issues.

We, therefore, feel that H.R. 1906 should be delayed until we have had an opportunity to review the proposed changes and reach consensus agreement, if possible. Thank you for the opportunity to provide this testimony.

Mr. DOOLITTLE. Thank you. And our next witness will be Mr. McCovey.

STATEMENT OF PLINY MCCOVEY, SR., VICE CHAIRMAN, HOOPA VALLEY TRIBE OF CALIFORNIA

Mr. MCCOVEY. Thank you, Mr. Chairman and members of the subcommittee. It is an honor to be here today. I am Pliny McCovey, and I am the Vice Chairman of the Hoopa Valley Tribe. I also sit on the Klamath Fisheries Management Council; also on the Salmon Subpanel of the Pacific Fisheries Management Council. I also am on the Trinity Task Force.

I am testifying on behalf of the Hoopa Valley Tribe and the Klamath Inter-Tribal Fish and Water Commission. The commission was formed on January 6, 1995, by the Hoopa Valley Tribe, the Yurok and Karuk and the Klamath Tribes in southern Oregon to preserve the natural resources of the Klamath-Trinity Basin ecosystem for the spiritual and well being of nearly 10,000 enrolled tribal members. We ask that our written testimony be included in the record.

We strongly oppose H.R. 1906 because of the adverse effects it would have on fish and wildlife populations throughout California. We particularly oppose 6(b)(6) of H.R. 1906 because that provision would use delay and duplicative, bureaucratic procedures to politi-

cize and effectively repeal the Trinity provision of the Central Valley Improvement Act.

In modern times, Congress has recognized Indian reserve fishing rights in the Trinity River. We, the tribes, own about 50 percent of the fishery in the Klamath Management Zone. When Congress authorized the Trinity Division of the Central Valley Project in 1955, it required that an instream flow be maintained for the preservation and propagation of fish and wildlife in the Trinity River.

Nonetheless, the Trinity Division eliminated spawning habitat for 109 miles of the Trinity Basin resulting in the diversion to the Central Valley of up to 90 percent of the average annual discharge from the Trinity River at Lewiston Dam to the Central Valley Project.

The once abundant salmon fishery in which the tribes in the basin owned reserved fishing rights and which was the mainstay of the Pacific Coast commercial fishing industry was nearly destroyed. The Trinity River is now incapable of supplying the ceremonial and subsistence needs to the tribes, let alone supporting tribal commercial fishing rights.

In 1992, Congressman Frank Riggs reinforced the Secretarial decision with an act of Congress. After a difficult legislative battle, Congressman Riggs achieved bipartisan support for enactment of Section 3406(b)(23) of the Central Valley Project Improvement Act better known as the Riggs Amendment.

The Riggs Amendment both confirms Secretary Lujan's decision and established a legal framework for reaching a final decision on water requirements for the Trinity River fishery and developing of operating criteria and procedures for the Trinity Division.

Agricultural interests in the Central Valley Project attacked the Riggs Amendment in Court. That attack collapsed almost as soon as it began. The Federal District Court in the Central Valley ruled that the Riggs Amendment had a solid foundation and administrative record developed by Secretary Lujan, and that the Department of Interior immediately began implementation of the Riggs Amendment without prior additional compliance with the National Environmental Policy Act, the Westlands Water District v. U.S.

Section 6(b)(6) of H.R. 1906 is the latest assault on the Riggs Amendment. H.R. 1906 will force the return to the political arena and Congress of detailed scientific data regarding fishery conservation and hydrology that the Department of the Interior has spent 15 years and tens of millions of dollars developing at Congress's direction.

In summary, on behalf of the Hoopa Tribe and the Klamath Inter-Tribal Fish and Water Commission, we adamantly oppose any congressional efforts to circumvent the intent of the Riggs Trinity River provision of the Central Valley Improvement Act. The future of the tribes, and to a large extent the north coast economies, rests upon successful restoration of the Trinity Basin.

And tribes are in agreement with our upriver neighbors in Trinity County that the needless delays to the Interior Secretary's '96 Trinity River stream flow decision is, in essence, continuance of a taking from our people. With that, I would like to again say that it is an honor to be here, and if you have any questions, I will be here. Thank you.

[Statement of Mr. McCovey may be found at end of hearing.]

Mr. DOOLITTLE. Thank you, sir. Mr. Stuart Somach is recognized.

STATEMENT OF STUART L. SOMACH, ESQUIRE, DE CUIR & SOMACH

Mr. SOMACH. Thank you, Mr. Chairman, members of the subcommittee. I am here representing various northern California water interests including the Glenn-Colusa Irrigation District, for which I am general counsel, water contractors on the Tehama-Colusa Canal, and through the Northern California Water Association, numerous Sacramento River Water Rights Settlement Contractors.

The entities that I have listed have had direct exposure to and have been directly affected by the Central Valley Project Improvement Act. They have, as a consequence, been greatly interested in proposals that would clarify the CVPIA and better ensure its reasonable and successful implementation. We believe that H.R. 1906 constitutes one approach for dealing with problems associated with the CVPIA.

I want to turn my attention for the purposes of this verbal testimony to provisions of H.R. 1906 which most affect interests in the Sacramento Valley. H.R. 1906 would modify three definitions in the CVPIA. Two of these modifications focus on what water is subject to the provisions of the CVPIA and Bureau of Reclamation control.

When the CVPIA was drafted and debated, we were assured that only CVP water would be implicated. In particular, we were concerned that the rights of those with state-created water rights, which predate the water rights acquired by the CVP, would not be affected by the legislation.

In its implementation of the Central Valley Project Improvement Act, the Bureau of Reclamation has indicated that it will treat settlement contracts on the Sacramento River the same as CVP water service and repayment contracts. Sacramento River settlement contracts, however, are not water service or repayment contracts.

These settlement contracts were entered into with the United States as a means to address and resolve the protests of those with water rights on the Sacramento River to the granting of water rights to the Bureau of Reclamation for the CVP. These contracts were in every sense of the word a settlement of protests made by those with prior water rights on the Sacramento River.

At no time was there any intent, nor can the contracts themselves be construed as simply converting those prior water rights to reclamation contract rights. The base rights to water were never compromised as part of the settlement.

Sections 3(b) and (c) of H.R. 1906 address this issue by providing appropriate clarifications that the terms "Central Valley Project water," "repayment contract," and "water service contract" do not include water right settlement contracts such as those on the Sacramento River, and that the only water that reclamation can exercise control over is water that it has acquired.

Water rights acquired by others including Sacramento River settlement contractors are not for the United States to control. These provisions should not be viewed with concern by anybody. They merely confirm what was the intent, if not the letter, of the CVPIA.

Now, in the Sacramento Valley on the Tehama-Colusa Canal, there are CVP water contractors who have never been provided adequate water supplies. This unit of the CVP was authorized with Congress providing a priority in contracting for them.

Before contracting was completed, however, then Interior Secretary Andrus declared a contracting moratorium associated with environmental concerns in the bay and delta. As a practical matter, this moratorium has never been lifted, with the enactment of the CVPIA serving as a further obstacle to the United States providing to these contractors what had been promised.

The CVPIA also created additional practical problems which did not serve to advance any particular environmental purpose and, in fact, have sapped the Bureau's limited resources to the extent that we believe progress under the more critical provisions of the CVPIA have been prejudiced.

For example, it established a destabilizing interim contracting procedure which provides that interim contracts must be entered into for terms of three years, then two years, until certain illusory events occur in the future. H.R. 1906 provides that only one interim contract need be negotiated with regular long-term contracting to proceed upon the completion of the programmatic environmental impact statement.

Section 4 of H.R. 1906 also seeks to address the uncertainty created by CVPIA treatment of contract term. Section 4 provides for the mandatory renewal of contracts for successive periods of 25 years, thus recreating the stability in water supplies that existed prior to the enactment of the CVPIA.

Moreover, Section 4 does this without in any way affecting the environmental purposes of the CVPIA. All contracts that would be executed under this section are to include provisions that will allow the environmental purposes of the CVPIA to be enforced and implemented.

Proposed modifications to the CVPIA provisions on water transfers and water conservation are geared toward advancing these purposes. The provisions of H.R. 1906 that address these issues and repeal of the "one size fits all" tiered pricing were developed through experience and relate to how things really work as opposed to dealing with these issues on a purely theoretic basis.

The CVPIA clearly has some major defects. We believe two options exist. The first is to ignore these defects out of some ill-defined fear that to modify the CVPIA at all is to destroy its environmental effectiveness. The second option is to fix what is defective so that the CVPIA can serve the purposes for which it was written. We do not think that there should be any question about which course is the most appropriate way to proceed. We must fix the defective aspects of the CVPIA so that it can serve as an effective vehicle to carry out its intended purposes. Thank you.

[Statement of Mr. Somach may be found at end of hearing.]

Mr. DOOLITTLE. Thank you. I would like to say to Mr. Thomas, you are going to have that time. We won't go to markup before the August recess so we will welcome your meetings and get your input on this. I mean, I have heard various attributions as to the cause of the decline of the fisheries, whether it is offshore oil drilling, as

was claimed once, or whether it is logging practices, as has been claimed, or whether it is the CVP.

We heard some very compelling testimony here last month by a professor of biology—I think he was from the University of Washington—indicating that it has to do with the temperature of the water. And there is an inverse relationship between the situation off the coast of Alaska and off our north coast. And when one is good, the other is bad.

So, I don't know. But I do understand you have your point of view, to which you are certainly entitled. Nevertheless, we will look forward to trying to identify a common ground wherever possible.

And to Mr. Riggs whose input in all of this I appreciate and who has had a significant impact on the way the provision of the Trinity River is worded, I would just say to you that what we are trying to accomplish is to address the chronic water shortage south of the delta.

They are concerned about the present provision in the law where the Secretary can arbitrarily—well, hopefully it is not arbitrarily, but it would be possible for it to be arbitrary—can determine some increased level of flow above the 340,000 acre feet, and that will dramatically impact what happens south of the delta.

We at least would like to know the scientific conclusions, the data on which that decision is going to be based and have the opportunity to challenge that in Court should we feel that the rights are being violated there. That is the purpose of it. Having represented Trinity County once in our State Senate, I am well aware of the conditions they face there, and then they have good reason to complain over the years past what has happened to their fisheries and their river and so forth. I am sympathetic to that.

But we are trying to provide some sort of a balance in this bill to address the competing equities. I really don't think we have done violence to the Trinity River in the bill. We are just asking for the data to be submitted, public hearing comment and notice, and the opportunity to go to Court if we feel it is improperly decided. As you know, it was written differently, and your intervention changed that. We will continue to work together as we move ahead.

Mr. Somach, we have heard some people comment that we just ought to do this administratively, and, you know, to have a bill right now is a fly in the ointment. Do you believe that your concerns relative to the water rights of your clients will or likely will be protected administratively?

Mr. SOMACH. I have absolutely no confidence that if we leave this to administrative fiat that the issues I have raised will be addressed satisfactorily. And, in fact, we have had extensive conversations with the Bureau of Reclamation and others at the Department of Interior, and we know at least at this point that they are going to be dealt with exactly opposite to the way that we believe they should be.

And we have been arguing this point with them since the day after the enactment of this bill and have yet to get any kind of relief or any kind of satisfaction on what we thought was very clear when the Act was enacted. So we see no other way to proceed with respect to clarification than through legislation.

Mr. DOOLITTLE. Just out of curiosity, when you have these discussions, who is it with? Is it with Mr. Patterson, with the Sacramento office, or is it Denver? Who do you talk to?

Mr. SOMACH. I have had conversations on this specific issue myself with Mr. Patterson. I have had conversations with Mr. Patterson and Mr. Fazio together. We have articulated this point. I have had conversations with the Assistant Secretary at the time, Rieke. I have had conversations on this issue with Commissioner Beard; I have had this conversation everywhere, anywhere I can think of to raise the issue.

Mr. DOOLITTLE. So you pretty well feel that you have exhausted your administrative remedies as far as that goes?

Mr. SOMACH. We do feel that way and because some of the issues that are implicated with respect to what we are talking about will trigger soon, certainly in 1997. Unless we get some legislative clarification on this issue, we will undoubtedly seek some litigated clarification on the point.

Mr. DOOLITTLE. OK. Thank you. Mr. Miller is recognized.

Mr. MILLER. Thank you, Mr. Chairman. Thank you to the panel, and, Mr. Thomas, I just want to thank you for your testimony. I think that during the debate over the CVPIA the commercial fishermen and the sport fishermen for the first time demonstrated to many people that other users of this water were small businesses and people and families who were reliant on the byproduct of the water, if you will, and that is the fisheries.

And the ability to rehabilitate these fisheries is about the economics of a lot of families on the north coast and in the San Francisco Bay area that are dependent upon other users, whether they are sportsmen or whether it is the commercial taking of some of these fish.

And I think that is an important part to keep in mind because very often the suggestion is that the rehabilitation of the delta or of the Trinity or of the Sacramento River or these other assets of our state that somehow that is just sort of an abstract, passive environmental issue when, in fact, it is a very dynamic operation that a lot of other people depend upon. And you can relay that all the way to the tourist industry and the health of San Francisco Bay that is utilized.

I can remember as a kid when you could smell it before you could see it, and we have put a lot of money into rehabilitating that, and water obviously as we have learned more and more from the sciences is becoming the key important part of that rehabilitation. So I want to thank you and thank the other witnesses for their testimony. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Thank you. Mr. Radanovich is recognized.

Mr. RADANOVICH. I just want to thank the panel members and state that I have no questions.

Mr. DOOLITTLE. OK. Thank you. Mr. Dooley.

Mr. DOOLEY. Yes. I was kind of interested and we had some discussion earlier today, Mr. Thomas, this relates to the increased salmon catch off the Pacific Coast. I have an aunt and uncle that live in Morro Bay, and they are talking about the same thing. What do you attribute that to? I mean, as I understand, it takes how many years before you catch a salmon of that size?

Mr. THOMAS. Well, it takes two years for a legal size sport fish to be caught which is 20 inches. That is with good conditions in the ocean. It takes three years for a legal commercial fish which is 26 inches. In yesterday's Chronicle—that is probably what you are referring to, plus the article that Congressman Riggs has here—they talked about what great salmon fishing we have.

And L.B. Boyneston from the California Department of Fish and Game stated that he felt one of the major reasons was the low delta exports in 1992 and 1993 allowed the hatchery fish to get past some of the perils, plus good ocean recruitment which is good ocean conditions which have been excellent the last couple of years. There have been an awful lot of feed.

I also think that the ESA restrictions that have been placed for the winter-run have benefited the fall-run greatly; lifting of the gates at Red Bluff Diversion Dam through the Central Valley Fisheries Coalition which we are a charter member. We worked very close with GCID. GCID now has an interim screen that isn't killing any fish in the Sacramento River because of their cooperation in spending the money. So this total package, plus the fact that the ocean is in extremely healthy condition this year with good feed.

Mr. DOOLEY. Now, the California Department of Fish and Game—the gentleman said that it was because of what?

Mr. THOMAS. L.B. Boyneston in the San Francisco Chronicle yesterday said that one of the factors could be that there was a low delta exports in 1992 and 1993, therefore, letting some of the hatchery fish get by. One thing that I didn't mention——

Mr. DOOLEY. So I guess one of the points that some of us would make then is that even before the CVPIA was even implemented, there were measures that were ensuring that we were providing for some level of environmental enhancement at that time.

Mr. THOMAS. Well, as we heard here earlier today, I don't think that there has been any great implementation of the CVPIA to this date yet that has helped the fish. It is all these other things that I just mentioned——

Mr. DOOLEY. Which were——

Mr. THOMAS [continuing]. that contributed together, plus the commercial salmon stamp program where our industry and the commercial people participate in a commercial stamp program where we self-tax ourself, and we produce some fish, and we get 10 million fish a year past all the delta hazards and into the bay. And we have done this program for quite some time.

My fleet has gone from 187 boats at a high down to around 70 boats. The commercial fleet has gone from 8,000 permits down to about 2,200. And we are still self-taxing ourselves. So all these programs combined have contributed I think to the success that we have today.

Mr. DOOLEY. That is great. And one other statement that you made, and your statement was that there were millions of baby salmon that were killed at the Federal pumps every year. Now, a baby salmon is different than a smolt, or are those one and the same?

Mr. THOMAS. The smolts are baby salmon.

Mr. DOOLEY. So where do you——

Mr. THOMAS. There are salmon coming from many runs, and they not only get killed at the pumps, they get entrapped from reverse flows which the pumps cause and lose their way.

Mr. DOOLEY. What is the reference you are using for that million? Because we obviously have been monitoring that somewhat, and some of that work that is being done by DWR and Fish and Game and others who have been involved in some tagging programs have been monitoring some of the take at the pumps. And I haven't heard any extrapolations that got to millions. I was just curious about that.

Mr. THOMAS. I would be happy to try to provide you some written documentation, and I will be happy to do that. I plan to report to your committee following our meeting next week, and I will provide you with that.

Mr. DOOLEY. I would really appreciate that.

Mr. THOMAS. OK.

Mr. DOOLITTLE. OK. Mr. Pombo is recognized.

Mr. POMBO. No questions.

Mr. DOOLITTLE. All right. Well, I think we have come to the close of the hearing, and we appreciate all the witnesses and this panel as well. We will have some additional questions to submit, and we would ask you to respond expeditiously in writing. And with that, the hearing is adjourned.

[Whereupon, at 4:00 p.m., the subcommittee was adjourned; and the following was submitted for the record:]

I

104TH CONGRESS
1ST SESSION

H. R. 1906

To amend the Central Valley Project Improvement Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 21, 1995

Mr. DOOLITTLE (for himself, Mr. RADANOVICH, Mr. CONDIT, Mr. THOMAS, Mr. HERGER, Mr. FAZIO of California, Mr. POMBO, and Mr. DOOLEY) introduced the following bill; which was referred to the Committee on Resources

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A BILL

To amend the Central Valley Project Improvement Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Central Valley Project Reform Act of 1995".

SEC. 2. PURPOSE.

Section 3402(f) of the Central Valley Project Improvement Act (106 Stat. 4706) is amended to read as follows:

"(f) to require that the Secretary operate the Central Valley Project in a manner to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.".

SEC. 3. DEFINITIONS.

(a) ANADROMOUS FISH.—Section 3403(a) of the Central Valley Project Improvement Act (106 Stat. 4707) is amended to read as follows:

"(a) the term 'anadromous fish' means those stocks of Salmon (including steelhead) that ascend the Sacramento and San Joaquin rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in San Francisco Bay or the Pacific Ocean;".

(b) CENTRAL VALLEY PROJECT WATER.—Section 3403(f) of the Central Valley Project Improvement Act (106 Stat. 4707) is amended to read as follows:

"(f) the term 'Central Valley Project water' means all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Central Valley Project and in accordance with the terms and conditions of water

rights permits or licenses acquired by or issued to the United States pursuant to California law;".

(c) REPAYMENT AND WATER SERVICE CONTRACTS.—Section 3403(k) of the Central Valley Project Improvement Act (106 Stat. 4707) is amended to read as follows:

"(k) the terms 'repayment contract' and 'water service contract' have the same meaning as provided in sections 9(d) and 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1187, 1195), as amended, but such terms do not include those contracts which contain terms or agreements for water right settlements, such as those on the Sacramento River, or water right exchanges, notwithstanding that such contracts may also include provisions which are the same or similar to those contained in repayment or water service contracts;".

SEC. 4. LIMITATION ON CONTRACTING AND CONTRACT REFORM.

(a) NEW CONTRACTS.—Section 3404(a) of the Central Valley Project Improvement Act (106 Stat. 4708) is amended to read as follows:

"(a) NEW CONTRACTS.—Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term con-

tracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before the Secretary has completed appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, and has determined that there is sufficient water to meet the existing contractual and legal obligations of the Secretary relative to the Central Valley Project.".

(b) RENEWAL OF EXISTING LONG-TERM CONTRACTS.—Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4708) is amended—

(1) by amending subsection (c) to read as follows:

"(c) RENEWAL OF EXISTING LONG-TERM CONTRACTS.—Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contracts which provide for the delivery of water from the Central Valley Project for a period of twenty-five years and shall renew such contracts for successive periods of 25 years each.

"(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been com-

pleted. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 shall, upon request of the other contracting party, be renewed for an interim period ending on the date on which the long-term renewal with respect to each such contract becomes effective. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. Upon request of the other contracting party, the Secretary shall execute an amendment to extend the term of any interim renewal contract entered into under this paragraph before the enactment of the Central Valley Project Reform Act of 1995 in accordance with this title. Notwithstanding any other provision of law, all contracts renewed by the Secretary since January 1, 1988, but before the enactment of this title are hereby validated and ratified in all respects as of their respective dates of execution, except that all water delivered pursuant to such renewed contracts shall be subject to payment of the charges mandated in sections 3406(c)(1)(D) and 3407(d) of this title.

"(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Sec-

retary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title."; and

(2) by adding at the end thereof the following new subsection:

"(d) Contracts entered into or renewed pursuant to this section shall, upon request of the other contracting party, include a provision which requires the Secretary to charge such party only for water actually delivered by the Secretary.".

SEC. 5. WATER TRANSFERS, IMPROVED WATER MANAGEMENT AND CONSERVATION.

(a) CONDITIONS FOR TRANSFER.—The matter preceding subparagraph (A) in section 3405(a)(1) of the Central Valley Project Improvement Act (106 Stat. 4710) is amended to read as follows:

"(1) CONDITIONS FOR TRANSFERS.—All transfers of Central Valley Project water authorized by the subsection shall be subject to review and approval by the Secretary and the contracting district or agency under the conditions specified in this subsection:".

(b) TECHNICAL AMENDMENT.—Section 3405(a)(1)(A) of the Central Valley Project Improvement Act (106 Stat. 4710) is amended by striking "to combination" and inserting "or combination".

(c) APPROVAL OF TRANSFER REQUEST.—Subparagraphs (J), (K), (L), and (M) of section 3405(a)(1) of the Central Valley Project Improvement Act (106 Stat. 4711) are amended to read as follows:

"(J) The contracting district or agency shall either approve the transfer request subject to reasonable conditions or deny the transfer request subject to making findings supporting a reasonable basis for the denial. The conditions or findings shall only relate to the proposed transfer's impacts on any of the following:

"(i) The quantity and quality of the water supply available to the contracting district or agency and its water users, including impacts to ground water quantity and quality.

"(ii) The contracting district or agency's operations, including (but not limited to) the ability of the contracting district or agency to meet its delivery obligations, obtain additional water supplies, and under-

take conservation measures, exchanges, transfers, ground water storage, water banking arrangements, or conjunctive use programs.

"(iii) The contracting district or agency's financial condition and the cost of providing water service.

"(iv) The appropriate maintenance of fallowed land.

"(v) Other relevant factors that may create an adverse financial, operations or water supply impact on the contracting district or agency, its water users, or the local community.

"(K) The Secretary shall not alter an approval or denial by the contracting district or agency under subparagraph (J) of this section unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes, except in the event that the Secretary determines pursuant to findings setting forth the basis for such determination that such

adverse effects would be more than offset by the benefits of the proposed transfer. In the event of such a determination, the Secretary shall develop and implement alternative measures and mitigation activities as integral and concurrent elements of any such transfer to provide fish and wildlife benefits substantially equivalent to those lost as a consequence of such transfer.

"(L) Transfers between Central Valley Project contractors within counties, watersheds, or other areas of origin, as those terms are utilized under California law, shall be deemed to meet the conditions set forth in subparagraphs (A) and (I) of this paragraph.".

(d) TRANSFERS AFTER SEPTEMBER 30, 1999.—Section 3405(a)(3) of the Central Valley Project Improvement Act (106 Stat. 4712) is amended to read as follows:

"(3) TRANSFERS AFTER SEPTEMBER 30, 1999.—Transfers executed after September 30, 1999, shall only be governed by the provisions of sections 3405(a)(1)(A)–(C), (E), (F), (G), (H), (I), (K), and (L) of this title, and by State law.".

(e) TRANSFERS, EXCHANGES, AND BANKING ARRANGEMENTS UNDER PRIOR LAW.—Section 3405(a) of

the Central Valley Project Improvement Act (106 Stat. 4709) is amended by adding at the end the following:

"(4) TRANSFERS, EXCHANGES, AND BANKING ARRANGEMENTS UNDER PRIOR LAW.—Notwithstanding any other provision of law, the authority to make transfers, exchanges, and banking arrangements of Central Valley Project water which could have been conducted prior to the enactment of this title is continued hereby, and such transfers, exchanges, and banking arrangements shall not be subject to, limited, or conditioned by this title.".

(f) MEASUREMENT OF WATER USE REQUIRED.—The heading of subsection (b) of section 3405 of the Central Valley Project Improvement Act (106 Stat. 4712) is amended by striking "METERING" and inserting "MEASUREMENT".

(g) WATER CONSERVATION STANDARDS.—Section 3405 of the Central Valley Project Improvement Act (106 Stat. 4709) is amended by striking out subsection (d), redesignating subsections (e) and (f) as subsections (d) and (e), and amending subsections (d) and (e) (as so redesignated) to read as follows:

"(d) WATER CONSERVATION STANDARDS.—(1) The Secretary shall establish and administer an office of Central Valley Project water conservation best manage-

ment practices that shall, in consultation with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982. In developing the criteria described in this paragraph for refuges, in addition to consulting with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, the Secretary shall consult with the California Department of Fish and Game.

"(2) Criteria developed pursuant to this subsection shall apply only to Central Valley Project water and shall be established within six months following enactment of this title and shall be reviewed periodically thereafter, but no less than every five years, with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices. The criteria shall include, but not be limited to agricultural water suppliers' efficient water management practices developed pursuant to California State law or reasonable alternatives. The conservation guidelines and criteria may

include only those management practices and conservation measures which (A) are demonstrated by the Secretary to achieve significant water conservation and efficient management of water resources without unreasonably burdening project contractors or their water users, (B) are demonstrated by the Secretary to be practices or measures that are cost-effective and economically feasible under applicable circumstances, and (C) take into consideration the amount of water under contract to the project contractor, probable Central Valley Project water supply, economic resources, geography, and other factors relevant to that project contractor.

"(3) The Secretary, through the office established under this subsection, shall review and evaluate within 18 months following enactment of this title all existing conservation plans submitted by project contractors to determine whether they meet the conservation and efficiency criteria established pursuant to this subsection.

"(4) The Secretary shall approve or disapprove a water conservation plan within 90 days after such plan is submitted under this subsection. A water conservation plan shall be deemed to be approved if the Secretary fails to approve or disapprove such plan within such 90-day period.

"(5) Water conserved by a project contractor or water user pursuant to a plan approved under this subsection shall accrue, in a manner consistent with State law, to the benefit of such project contractor or water user.

"(6) Compliance with conservation guidelines and criteria developed pursuant to this subsection shall be deemed compliance with section 210 of the Reclamation Reform Act of 1982 (43 U.S.C. 390jj).

"(e) INCREASED REVENUES.—All increased revenues received by the Secretary which exceed the cost of service rate applicable to the delivery of water transferred from irrigation use to municipal and industrial use under subsection (a) shall be covered to the Restoration Fund.".

SEC. 6. FISH, WILDLIFE AND HABITAT RESTORATION.

(a) SATISFACTION OF PURPOSES.—Section 3406 of the Central Valley Project Improvement Act (106 Stat. 4714) is amended by adding at the end the following new subsection:

"(i) SATISFACTION OF PURPOSES.—By pursuing the programs and activities authorized by this section, the Secretary shall be deemed to have met the mitigation, protection, restoration, and enhancement purposes of section 2 of the Act of August 26, 1937 (ch. 832, 50 Stat. 850), as amended.".

(b) FISH AND WILDLIFE RESTORATION ACTIVITIES.—(1) The matter preceding subparagraph (A) of section 3406(b)(1) of the Central Valley Project Improvement Act (106 Stat. 4714) is amended to read as follows:

"(1) assist the State of California in pursuing its goal of doubling production of anadromous fish in Central Valley rivers and streams in accordance with the program specified in the report prepared by the California Department of Fish and Game entitled 'Central Valley Salmon and Steelhead Restoration and Enhancement Plan', dated April 1990, through the actions specified in this subsection, with priority given to those actions specified in paragraphs (4) through (22): *Provided*, That this goal shall not apply to the San Joaquin River between Friant Dam and the Mendota Pool, for which separate provision has been made under section 3406(c) of this title: *Provided further*, That in the course of assisting the State of California, the Secretary shall make all reasonable efforts consistent with the requirements of this section to address other identified adverse environmental impacts of the Central Valley Project not specifically enumerated in this section.".

(2) Subparagraphs (B) and (C) of section 3406(b)(1) of the Central Valley Project Improvement Act (106 Stat. 4714) are amended to read as follows:

"(B) As needed to achieve the goals of this program, the Secretary is authorized and directed to modify Central Valley Project operations to provide reasonable flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish, except that such flows shall be provided from the quantity of water reserved for fish, wildlife, and habitat restoration purposes under paragraph (2) of this subsection; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. Reasonable instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the United States Fish and Wildlife Service after consultation with the California Department of Fish and Game.

"(C) The Secretary shall cooperate with the State of California to ensure that, to the greatest degree practicable, the specific quantities of Central Valley Project water reserved and managed for fish and wildlife purposes under this title are credited against any additional obligations of the Central Valley Project which may be imposed by the State of California following enactment of this title, including but not limited to increased flow and reduced export obligations which may be imposed by the California State Water Resources Control Board in implementing San Francisco Bay/Sacramento-San Joaquin Delta Estuary standards pursuant to the review ordered by the California Court of Appeals in United States v. State Water Resources Control Board, 182 Cal. App. 3d 82 (1986), and that, to the greatest degree practicable, the programs and plans required by this title are developed and implemented in a way that avoids inconsistent or duplicative obligations from being imposed upon Central Valley Project water and power contractors.".

(3) Section 3406(b)(2) of the Central Valley Project Improvement Act (106 Stat. 4714) is amended to read as follows:

"(2) upon enactment of this title, reserve and manage annually 800,000 acre-feet of Central Valley Project water, excluding any Central Valley Project water delivered under the Contract for Exchange of Waters described in subsection (c)(1)(C) of this section for the purposes of (A) implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; (B) assisting the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and (C) helping to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including (but not limited to) additional obligations under the Endangered Species Act of 1973: *Provided,* That all Central Valley Project water used to assist the State of California in its efforts to protect the water of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and to help meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of en-

actment of this title, including (but not limited to) additional obligations under the Endangered Species Act of 1973, is credited to the amount of Central Valley Project water so reserved under this paragraph: *Provided further*, That the Central Valley Project water reserved under this paragraph shall not be used to increase the flow of water through the San Francisco Bay/Sacramento-San Joaquin Delta Estuary beyond that required to meet the requirements of the Bay/Delta Water Quality Control Plan, as may be amended or modified, or the Endangered Species Act of 1973. To the fullest extent possible and in accordance with section 3411 of this title, after using a quantity of such 800,000 acre-feet of water for fish and wildlife purposes pursuant to this paragraph, the Secretary shall reuse or divert such quantity of water for agricultural or municipal and industrial purposes.

"(A) Such quantity of water shall be in addition to the quantities needed to implement subsection (d)(1) of this title and in addition to all water allocated pursuant to paragraph (23) of this subsection for release to the Trinity River for the purposes of fishery restoration, propagation, and maintenance; and shall be

supplemented by all water that comes under the Secretary's control pursuant to subsection (b)(3), sections 3408(h)–(i), and through other measures consistent with paragraph (1)(B) of this subsection.

"(B) Such quantity of water shall be managed pursuant to reasonable conditions specified by the United States Fish and Wildlife Service after consultation with the Bureau of Reclamation and the California Department of Water Resources and in cooperation with the California Department of Fish and Game.

"(C) The Secretary may temporarily reduce deliveries of the quantity of water reserved under this paragraph up to 25 percent of such total whenever reductions are imposed upon agricultural water service contractors; *Provided,* That such reductions shall not exceed in percentage terms the reductions imposed on agricultural water service contractors; *Provided further,* That nothing in this subsection or subsection (d) shall require the Secretary to operate the project in a way that jeopardizes human health or safety.

"(D) If the quantity of water reserved under this paragraph, or any portion thereof, is not needed for the purposes of this section, based on a finding by the Secretary, the Secretary is authorized to make such water available for other project purposes.".

(4) Section 3406(b)(3) of the Central Valley Project Improvement Act (106 Stat. 4716) is amended to read as follows:

"(3) develop and implement a program in coordination and in conformance with the plan required under paragraph (1) of this subsection for the acquisition of a water supply to supplement the quantity of water reserved for fish and wildlife purposes under paragraph (2) of this subsection and to fulfill the Secretary's obligations under subsection (d)(2). The program should identify how the Secretary intends to utilize, in particular the following options: improvements in or modifications of the operations of the project; water banking; conservation; transfers; conjunctive use; and temporary and permanent land fallowing, including purchase, lease, and option of water, water rights, and associated agricultural land.".

(5) Section 3406(b) of the Central Valley Project Improvement Act (106 Stat. 4714) is amended by striking paragraph (18) and by redesignating paragraphs (19) through (23) as paragraphs (18) through (22), respectively.

(6) Section 3406(b)(22) of the Central Valley Project Improvement Act (106 Stat. 4716), as amended by paragraph (5) of this subsection, is amended to read as follows:

"(22)(A) In order to meet Federal trust responsibilities to protect the fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the Act of October 24, 1984, Public Law 98–541, provide through the Trinity River Division, for water years 1992 through 1996, an instream release of water to the Trinity River of not less than three hundred and forty thousand acre-feet per year for the purposes of fishery restoration, propagation, and maintenance.

"(B) By September 30, 1996, the Secretary, after consultation with the Hoopa Valley Tribe, shall complete the Trinity River Flow Evaluation Study currently being conducted by the United States Fish and Wildlife Service under the mandate of the Secretarial Decision of January 14, 1981, in a manner which ensures the development of rec-

ommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and Trinity River Division operating criteria and procedures for the restoration and maintenance of the Trinity River fishery.

"(C) Not later than December 31, 1996, the Secretary shall forward the recommendations of the Trinity River Flow Evaluation Study, referred to in subparagraph (B) of this paragraph, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives. If the Secretary and the Hoopa Valley Tribe concur in these recommendations, any increase to the minimum Trinity River instream fishery releases established under this paragraph and the operating criteria and procedures referred to in subparagraph (A) shall be implemented in accordance with subparagraph (D). If the Hoopa Valley Tribe and the Secretary do not concur, the minimum Trinity River instream fishery releases established under subparagraph (A) shall remain in effect unless increased by an Act of Congress, appropriate judicial decree, or agreement between the Secretary and the Hoopa

Valley Tribe implemented in accordance with subparagraph (D).

"(D) The Secretary may only implement recommendations pursuant to the study referred to in subparagraph (B) relating to instream flows through a rulemaking process under chapter 5 of title 5, United States Code (relating to administrative procedure), with a comment period of not less than 60 days and not more than 180 days. The studies and data on which such recommendations are based shall be available for public review.

"(E) Any recommendation implemented pursuant to subparagraph (D) shall provide for a variance in the instream flow to take into account differing hydrologic and reservoir storage conditions.

"(F) Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law.".

(7) Section 3406(c) of the Central Valley Project Improvement Act (106 Stat. 4721) is amended to read as follows:

"(c) SAN JOAQUIN AND STANISLAUS RIVERS.—(1)(A) In furtherance of the purposes of this title, the Secretary shall cooperate with the State of California and

local agencies and entities that impound and/or divert water tributary to the San Joaquin River in the development and implementation of projects to—

"(i) coordinate the flows in the Stanislaus, Tuolumne, Merced, and San Joaquin Rivers and exports at the Tracy and Banks pumping plants to facilitate increased survival of San Joaquin River chinook salmon;

"(ii) develop and implement a program in the San Joaquin River and its tributaries to identify, restore, and improve channel and riffle locations, to clean spawning gravel of fine sediments, and to reduce sediment input from near stream and watershed areas due to erosion and land management practices;

"(iii)(I) establish a gene bank to ensure protection of San Joaquin River fall-run chinook salmon genetic material in the event of catastrophic loss, (II) selectively harvest hatchery fish to encourage increases in wild stocks of San Joaquin River fall-run chinook salmon, (III) mark all hatchery San Joaquin River fall-run chinook salmon to allow their identification in ocean and inland fisheries, (IV) capture and breed wild San Joaquin River fall-run chinook salmon to enhance wild populations, and (V) estab-

lish a genetic advisory committee to provide advice to the Secretary on the protection of San Joaquin River fall-run chinook salmon genetic material, which committee shall be composed of experts from academia, fishery management agencies, and water management agencies;

"(iv) install a minimum of six telemetry devices on the San Joaquin River and tributary channels for the purposes of estimating the current overall water quality conditions in the San Joaquin Basin, which information shall be made available for water managers to coordinate water management decisions;

"(v) develop a plan to restore and manage the riparian corridor of the San Joaquin River and its tributaries, including areas on both sides of river channels where flood frequency is sufficient to sustain riparian vegetation with the goals to restore areas where the corridor is gone and to develop action items for riparian vegetation where the value of fish and wildlife is reduced by land use practices;

"(vi) initiate a program of screening water diversions in the San Joaquin River, its tributaries and estuary, which program will locate, inventory, prioritize and select candidate sites and include installation and long-term maintenance as necessary;

"(vii) increase fall flows and install physical and/or mechanical solutions as appropriate in the Stanislaus, Tuolumne, and Merced rivers to attract and provide access to adult San Joaquin River chinook salmon and maintain suitable water temperatures for spawning: *Provided,* That any increase in flows shall be implemented only through purchase of water from willing sellers, water augmentation projects, and/or additional storage to increase export flexibility or other similar voluntary means: *Provided further,* That flow increases shall be integrated with physical and mechanical solutions which can lead to improved guidance flows and water quality in the lower San Joaquin River, such as a barrier at the head of Old River and/or an aeration device at Rough and Ready Island;

"(viii) evaluate methods to protect San Joaquin River chinook salmon stocks in the ocean and estuarine fisheries, mark all hatchery-produced San Joaquin River chinook salmon, evaluate San Joaquin River chinook salmon 'shaker' mortality, and coordinate additional salmon management practices which will contribute to increasing salmon reproduction and survivability;

"(ix) undertake measures to reduce salmon predator populations in the San Joaquin River, its tributaries, and other areas such as Clifton Court Forebay, including (but not limited to) encouraging predator harvest, voluntary increases in flows during spring outmigration, reducing water temperatures in summer, increasing turbidity during outmigration, removing predator concentrating features, and modifying channels to isolate predator habitat; and

"(x) provide for the annual installation during October to December of a barrier to divert returning adult San Joaquin River chinook salmon from the San Joaquin River into the Merced River, including acquisition of a site at the confluence of the San Joaquin River and the Merced River for barrier installation and operation;

"(xi) provide resources to the San Joaquin River Conservancy to assist in its overall efforts, including, but not limited to, land acquisition, natural resource surveys, and environmental studies that may be necessary for successful implementation of the San Joaquin River Parkway; and

"(xii) provide one-third matching funds for the annual operating budget for the hatchery at the Tuolumne River Salmon Restoration Center.

"(B) Funding for the projects described in subparagraph (A) shall be provided under sections 3407(b) and 3407(e). Funds provided pursuant to such sections may not be used for any action to address fish, wildlife and habitat concerns on the San Joaquin River downstream from Friant Dam, including (but not limited to) stream flow, channel, riparian habitat, and water quality improvements, until the Secretary determines that such action is reasonable, prudent and feasible. Any such action shall be subject to subparagraph (C).

"(C) The Congress hereby confirms that it is and has been its intent to prohibit all releases of water directly from Friant Dam into the San Joaquin River other than for bona fide purposes of (i) flood control, (ii) satisfying the requirements of that certain Contract for Exchange of Waters dated July 27, 1939, between the United States of America, the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, the Columbia Canal Company, the San Luis Canal Company and the Firebaugh Canal Company, as amended from time to time, or (iii) satisfying those contractual obligations of the Secretary which existed on the date of enactment of this title to provide water to landowners located between Friant Dam and Gravelly Ford. Therefore, notwithstanding any State or other Federal law, water shall not be released directly

from Friant Dam into the San Joaquin River except for the purposes enumerated in clauses (i), (ii), and (iii) of the preceding sentence.

"(D) In lieu of releasing water directly from Friant Dam into the San Joaquin River for any purposes of this title, entities receiving Central Valley Project water from the Friant Division of the Central Valley Project shall be assessed, in addition to all other applicable charges, a surcharge for all Class 1 and Class 2 water delivered in an amount that will result in collection, during each fiscal year, of $6,000,000. Such surcharge shall be in the amount of $4.00 per acre-foot and shall not apply to Class 2 water delivered in excess of 50 percent of the amount of Class 2 water to which a contracting party is contractually entitled.

"(E) Except as expressly provided in subparagraphs (C) and (D), nothing contained in those subparagraphs shall otherwise alter the applicability or inapplicability of State or other Federal law to entities receiving Central Valley Project water from the Friant Division of the Central Valley Project.

"(2) The Secretary shall, by not later than September 30, 1996, in the course of preparing the Stanislaus River Basin and Calaveras River Water Use Program Environmental Impact Statement and in consultation with the

State of California, affected counties, and other interests, evaluate and determine existing and anticipated future basin needs in the Stanislaus River Basin. In the course of such evaluation, the Secretary shall investigate alternative storage, release, and delivery regimes, including but not limited to conjunctive use operations, conservation strategies, exchange arrangements, and the use of base and channel maintenance flows, in order to best satisfy both basin and out-of-basin needs consistent, on a continuing basis, with the limitations and priorities established in the Act of October 23, 1962 (76 Stat. 173). For the purposes of this subparagraph, 'basin needs' shall include water supply for agricultural, municipal and industrial uses, and maintenance and enhancement of water quality, and fish and wildlife resources within the Stanislaus River Basin as established by the Secretary's June 29, 1981 Record of Decision; and 'out-of-basin' needs shall include all such needs outside of the Stanislaus River Basin, including those of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and those of the San Joaquin River under paragraph (1) of this subsection.".

(8) Section 3406(d) of the Central Valley Project Improvement Act (106 Stat. 4722) is amended to read as follows:

"(d) CENTRAL VALLEY REFUGES AND WILDLIFE HABITAT AREAS.—(1) In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the purposes of this title, the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; on the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California.

"(2) Upon enactment of this title and subject to paragraph (8) of this subsection, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 2 of the 'Dependable Water Supply Needs' table for those habitat areas as set forth in the Refuge Water Supply Report and two-thirds of the water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. Such water shall be provided through long-term contractual agreements with appropriate parties and shall be supplemented by the incre-

ment of water provided for in paragraph (3) of this subsection: *Provided,* That the Secretary shall be obligated to provide such water whether or not such long-term contractual agreements are in effect. In implementing this paragraph, the Secretary shall endeavor to diversify sources of supply in order to minimize possible adverse effects upon Central Valley Project contractors.

"(3) Not later than ten years after enactment of this title and subject to paragraph (8) of this subsection, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with level 4 of the 'Dependable Water Supply Needs' table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. The quantities of water required to supplement the quantities provided under paragraph (2) of this subsection shall be acquired by the Secretary in cooperation with the State of California and in consultation with the Central Valley Habitat Joint Venture and other interests in cumulating increments of not less than ten percent per annum through voluntary measures which include water conserva-

tion, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such activities which do not require involuntary reallocations of project yield.

"(4) All costs associated with implementation of paragraph (2) of this subsection shall be deemed a nonreimbursable Federal expenditure. Incremental costs associated with implementation of paragraph (3) of this subsection shall be fully allocated in accordance with the following formula: 75 percent shall be deemed a nonreimbursable Federal expenditure; and 25 percent shall be allocated to the State of California for recovery through direct reimbursements or through equivalent in-kind contributions.

"(5) The Secretary shall temporarily reduce deliveries of the quantity of water dedicated under paragraph (2) of this subsection up to 25 percent of such total whenever reductions are imposed upon agricultural water service contractors served from the same Division of the Central Valley Project: *Provided,* That such reductions shall not exceed in percentage terms the reductions imposed on agricultural water service contractors. For the purpose of shortage allocation, the priority or priorities applicable to the increment of water provided under paragraph (3) of this subsection shall be the priority or priorities which ap-

plied to the water in question prior to its transfer to the purpose of providing such increment.

"(6) In order to minimize possible adverse impacts upon Central Valley Project water contractors, the Secretary is authorized and directed to construct or to acquire from non-Federal entities such water conveyance facilities, conveyance capacity, pumping capacity, and wells as are necessary to implement the requirements of this subsection within one year after enactment of this paragraph. To carry out this obligation, and without limiting other actions, the Secretary shall, in cooperation with the State of California and Central Valley Project water contractors, implement those immediate actions necessary to facilitate the acquisition of pumping and conveyance capacity from the State. Additional water that can be delivered as a result of the acquisition of such additional pumping and conveyance capacity shall be allocated in a manner which avoids water shortages to Central Valley Project water contractors and users.

"(7) The Secretary, in consultation with the State of California, the Central Valley Habitat Joint Venture, and other interests, shall investigate and report on the following supplemental actions by not later than September 30, 1997—

"(A) alternative means of improving the reliability and quality of water supplies currently available to privately owned wetlands in the Central Valley and the need, if any, for additional supplies; and

"(B) water supply and delivery requirements necessary to permit full habitat development for water dependent wildlife on one hundred and twenty thousand acres supplemental to the existing wetland habitat acreage identified in Table 8 of the Central Valley Habitat Joint Venture's 'Implementation Plan' dated April 19, 1990, as well as feasible means of meeting associated water supply requirements.

"(8) Not later than 180 days after the date of the enactment of the Central Valley Project Reform Act of 1995, the Secretary shall prepare a report in which the Secretary assesses whether the Dependable Water Supply Needs outlined in the Refuge Water Supply Report and the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation accurately reflect reasonable dependable water supply needs for refuges, taking into account changes in habitat conditions and any other relevant factors. If the Secretary determines that the Dependable Water Supply Needs in such Reports do not reflect the reasonable dependable

water supply needs for refuges, the Reports shall be revised to reflect appropriate adjustments in the Dependable Water Supply Needs tables, and deliveries and increments described in paragraphs (2) and (3) of this subsection shall be adjusted accordingly to match the quantities specified in the revised Reports. The report shall be prepared with public involvement, including water contractors and users.

"(9) Not later than one year after the date of the enactment of this paragraph, the Secretary shall—

"(A) using water measuring devices or other water measuring methods, determine the quantity of all water provided by the Secretary to areas referred to in paragraph (1) of this subsection;

"(B) require that such areas be managed in accordance with water conservation plans which incorporate water conservation best management practices developed under section 3405(d) of this title; and

"(C) if the Dependable Water Supply Needs levels specified in paragraphs (2) and (3) of this subsection do not correspond with the demonstrated need following implementation of best management practices under this paragraph, the levels shall be

adjusted accordingly to match the level of such demonstrated need.".

(9) Section 3406(f) of the Central Valley Project Improvement Act (106 Stat. 4724) is amended by striking "Committees on Insular and Interior Affairs and Merchant Marine and Fisheries" and inserting "Committee on Resources".

(10) Section 3406 (106 Stat. 4714), as amended by subsection (a) of this section, is further amended by adding at the end the following new subsection:

"(j) PURCHASE OF ADDITIONAL WATER.—The Secretary may acquire any water needed to carry out this title which is in addition to the water required to be made available under subsections (b)(2), (b)(22), and (d) only by purchase in accordance with State law. Such purchases shall be Federal nonreimbursable expenditures to the extent they are not funded through the Restoration Fund established in section 3407 of this title.".

SEC. 7. RESTORATION FUND.

(a) RESTORATION FUND ESTABLISHED.—Section 3407(a) of the Central Valley Project Improvement Act (106 Stat. 4726) is amended to read as follows:

"(a) RESTORATION FUND ESTABLISHED.—

"(1) There is hereby established in the Treasury of the United States the 'Central Valley Project

Restoration Fund' (hereafter 'Restoration Fund') which shall be available for deposit of donations from any source and revenues provided under sections 3405(e), 3406(c)(1)(D), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. Monies donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation. Notwithstanding any other provision of this title, the Secretary may not directly or indirectly require a donation, or any other payment, to the Restoration Fund, or environmental restoration or mitigation fees not otherwise provided by law, as a condition to providing for the storage or conveyance of non-Central Valley Project water pursuant to reclamation laws, or as a condition to the delivery of water pursuant to section 215 of the Reclamation Reform Act of 1982 (96 Stat. 1270).

"(2) The Secretary may utilize amounts collected pursuant to section 3406(c)(1)(D) to assist in achieving applicable water quality standards imposed in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, with emphasis on funding projects described in section 3406(c)(1)(A) which will con-

tribute to achieving such standards. The balance of all surcharges collected pursuant to section 3406(c)(1)(D) shall be utilized by the Secretary to provide funding to the State of California or other entity described in section 3407(e)(1) to assist in the implementation of all projects described in such subparagraph (A) to which funding is not directed pursuant to the preceding sentence.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 3407(b) of the Central Valley Project Improvement Act (106 Stat. 4726) is amended by inserting "(from willing sellers)" after "acquisition".

(c) MITIGATION AND RESTORATION PAYMENTS BY WATER AND POWER BENEFICIARIES.—Section 3407(c) of the Central Valley Project Improvement Act (106 Stat. 4726) is amended to read as follows:

"(c) MITIGATION AND RESTORATION PAYMENTS BY WATER AND POWER BENEFICIARIES.—

"(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual mitigation and restoration payments, in addition to the charges provided for or collected under sections 3405(a)(1)(B), 3405(e), and 3406(c)(1)(D) of this title, consisting of charges to direct beneficiaries of the Central Valley Project

under subsection (d) of this section in order to recover a portion or all of the costs of fish, wildlife, and habitat restoration programs and projects under this title.

"(2) The payment described in this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can be reasonably expected to equal the amount appropriated each year, subject to subsection (d) of this section, and in combination with all other receipts identified under this title, to carry out the purposes identified in subsection (b) of this section.".

(d) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.—Paragraphs (1) and (2) of section 3407(d) of the Central Valley Project Improvement Act (106 Stat. 4727) are amended to read as follows:

"(1) In assessing the annual payments to carry out subsection (c) of this section, the Secretary shall, prior to each fiscal year, estimate the amount that could be collected in each fiscal year pursuant to paragraph (2) of this subsection. The Secretary shall decrease all such payments on a proportionate basis from amounts contained in the estimate so

that an aggregate amount is collected pursuant to the requirements of subsection (c)(2) of this section.

"(2) The Secretary shall assess and collect the following mitigation and restoration payments, to be covered to the Restoration Fund, subject to the requirements of paragraph (1) of this subsection:

"The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under subsection (c)(2) of this section: *Provided*, That such additional payments shall not exceed $30,000,000 (October 1992 price levels) on a three-year rolling average basis: *Provided further*, That such additional annual payments shall be allocated so as not to exceed $6 per acre-foot (October 1992 price levels) for Central Valley Project water for agricultural use delivered by the Central Valley Project and received or transferred by a Central Valley Project water contractor, and $12 per acre-foot (October 1992 price levels) for Central Valley Project water for municipal and industrial use delivered by the Central Valley Project and received or transferred by a Central Valley

Project contractor: *Provided further*, That the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years: *Provided further*, That the Secretary shall impose an additional annual charge of $25 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred, except water sold or transferred under the right of first refusal, to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund: *And Provided further*, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title, the Secretary shall reduce the sums described in subsection (c)(2) of this section to $35,000,000 per year (October 1992 price levels) and shall

reduce the annual mitigation and restoration payment ceiling established under this subsection to $15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in the same proportion, measured over a ten-year rolling average, as water and power users' respective allocations for repayment of the Central Valley Project.".

(e) FUNDING TO NON-FEDERAL ENTITIES.—Section 3407(e) of the Central Valley Project Improvement Act (106 Stat. 4728) is amended to read as follows:

"(e) FUNDING TO NON-FEDERAL ENTITIES.—

"(1) Except as provided by paragraph (2), if the Secretary determines that the State of California or an agency or subdivision thereof, an Indian tribe, or a nonprofit entity concerned with restoration, protection, or enhancement of fish, wildlife, habitat, or environmental values is able to assist in implementing any action authorized by this title in an efficient, timely, and cost-effective manner, the Secretary is

authorized to provide funding to such entity on such terms and conditions as he deems necessary to assist in implementing the identified action.

"(2) The use of funding provided by the Secretary to the State of California or other entity described in section 3407(e)(1) pursuant to subsection 3407(a)(2) to assist in the implementation of projects described in section 3406(c)(1)(A) shall be as determined by the State of California or such other entity and shall not be subjected to terms and conditions imposed by the Secretary which are unacceptable to the State of California or such other entity.".

(f) RESTORATION FUND FINANCIAL REPORTS.—Subsection (f) of section 3407 of the the Central Valley Project Improvement Act (106 Stat. 4728) is amended by striking "Committee on Interior and Insular Affairs, the Committee on Merchant Marine and Fisheries," and inserting "Committee on Resources".

SEC. 8. ADDITIONAL AUTHORITIES.

(a) ANNUAL REPORTS.—Section 3408(f) of the Central Valley Project Improvement Act (106 Stat. 4729) is amended—

(1) by striking out "Interior and Insular Affairs and Merchant Marine and Fisheries" and inserting in lieu thereof "Resources"; and

(2) in the second sentence, by inserting before the period at the end the following: ", including (but not limited to) progress on the plan required by subsection (j)".

(b) PROJECT YIELD INCREASE AND JUDICIAL DECREES.—Subsections (j) and (k) of section 3408 of the Central Valley Project Improvement Act (106 Stat. 4730) are amended to read as follows:

"(j) PROJECT YIELD INCREASE.—In order to minimize adverse effects upon existing Central Valley Project water contractors resulting from the water reserved for fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary shall, on a priority basis, not later than two years after the date of enactment of the Central Valley Project Reform Act of 1995, develop and submit to Congress, a least-cost plan to increase, as soon as possible but not later than ten years after the date of enactment of this title, the yield of the Central Valley Project by the amount reserved and managed for fish and wildlife purposes under this title and otherwise required to meet the purposes of the Central Valley Project including, without limitation,

satisfying contractual obligations. In order to carry out this subsection, the Secretary is authorized and directed to coordinate with the State of California in implementing measures for the long-term resolution of problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. The plan authorized by this subsection shall include (but not be limited to) a description of how the Secretary intends to use the following options:

"(1) Improvements in, modification of, or additions to the facilities and operations of the project.

"(2) Conservation.

"(3) Transfers.

"(4) Conjunctive use.

"(5) Purchase of water.

"(6) Purchase and idling of agricultural land.

"(7) Direct purchase of water rights.

Such plan shall include recommendations on appropriate cost-sharing arrangements and shall be developed in a manner consistent with all applicable State and Federal law. Such plan shall also include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes, and provisions of this subsection.

"(k) JUDICIAL DECREES.—Except as specifically provided in this title, nothing in this title is intended to

alter the terms of any final judicial decree confirming or determining water rights. Notwithstanding any other provision of reclamation law, the judgment entered December 30, 1986, by the United States District Court of the Eastern District of California in the consolidated cases entitled Barcellos and Wolfsen, Inc., et al. v. Westlands Water District, et al. (No. CV 78–106 EDP) and Westlands Water District, et al. v. United States, et al. (No. CV F 81–245 EDP), shall be deemed an existing long-term water service contract, which shall be renewable pursuant to section 3404(c) of this title.".

(c) TECHNICAL AMENDMENT.—Section 3408(h)(2) of the Central Valley Project Improvement Act (106 Stat. 4729) is amended by striking out "(h)(i)" and inserting in lieu thereof "(h)(1)".

(d) STANISLAUS RIVER.—Section 3408 of the Central Valley Project Improvement Act (106 Stat 4730) is amended by adding at the end the following:

"(e)(1) The Secretary shall identify the water supply impacts resulting from the reallocation of Stanislaus River water for fish and wildlife purposes under this title, and no later than two years after the date of enactment of the Central Valley Project Reform Act of 1995, develop and implement a plan to provide long term replacement water in an amount equal to the identified water supply

impacts on out-of-basin entities which have contracted with the Secretary for water from the New Melones Project. In the event the available yield of the New Melones Reservoir is insufficient to meet the contractual needs of these districts, then the Bureau shall provide an alternative supply at the contractual rate. Allocations for other Central Valley Project contractors shall not be reduced as a result of deliveries from New Melones Reservoir or any alternative source to the Stockton East Water District and the Central San Joaquin Water Conservation District.

"(2) The plan developed under paragraph (1) shall include (but not be limited to) utilization of exchange or transfer of water facilitated by the Secretary, other conjunctive use facilities satisfactory to the contracting entities, and/or additional diversion facilities. In the event additional facilities are authorized and constructed, out-of-basin entities which have constructed diversion facilities on the Stanislaus River pursuant to contracts with the Secretary for water from the New Melones Project, shall be credited, in the calculation of capital for any such new facilities, with an amount equal to 75 percent of the costs associated with the construction of those Stanislaus River diversion facilities. The construction of such facilities or the allocation of costs associated with such facilities shall

be treated as nonreimbursible capital costs of the Bureau and not result in increased allocation of costs to any other Central Valley Project contractor.".

STATEMENT OF SENATOR BILL BRADLEY
BEFORE THE SUBCOMMITTEE ON WATER AND POWER RESOURCES
HOUSE COMMITTEE ON RESOURCES
JULY 20, 1995

Mr. Chairman, thank you for giving me the opportunity to testify today on the Central Valley Project Improvement Act (CVPIA) and your efforts to amend it with your own bill, H.R. 1906. As one of the authors of this landmark act, I retain a deep interest in all bills and regulations which affect its fortunes.

The CVPIA was enacted to modernize the Central Valley Project and produce a balanced project which yields benefits for urban, environmental, Native American, state and Federal governments and commercial and sport fishing interests as well as for irrigated agriculture. But H.R. 1906 threatens to upset that careful balance by tilting the scales in favor of agriculture and reopening hostilities in California's long-standing water wars.

Before passage of the CVPIA in 1992, the Central Valley Project was in crisis. It was a relic of an earlier era which emphasized delivery of irrigation water at the expense of other interests such as the water needs of fish and wildlife and urban dwellers. The CVPIA helped resolve the crisis with a ground-breaking approach to irrigation projects featuring water conservation, voluntary water transfers to non-agricultural users, and water for wildlife and fish. At the same time, the CVPIA guaranteed a majority of the Project's water for irrigated agriculture under twenty-five year contracts and at subsidized rates.

Mr. Chairman, I see no reason for changes in the CVPIA. The

Act is working and it has worked in both wet and dry years. Yesterday's San Francisco Chronicle reports that California's salmon population has "exploded" this year to legendary proportions. Although this has been a very wet year, I believe a considerable part of this fish success story is attributable to the kinds of innovations contained in the CVPIA. According to California waterfowl experts, the four Sacramento Valley Wildlife refuges, allocated firm water supplies for the first time, experienced a 20% increase in waterfowl usage during the 1993-1994 water year over previous years, before the CVPIA was enacted.

Instead of rushing to change the CVPIA, the Congress needs to adopt a few of the old-time virtues, starting with patience. How can we begin unraveling a bill which is less than three years old and which is still in a relatively early stage of implementation? According to the Department of Interior, numerous rules and regulations implementing the statute remain to be finalized. Appropriately, the rulemaking process and not new legislation should be the forum for resolving concerns with CVPIA implementation. In fact, we will not even know if there are flaws in the CVPIA itself until the rulemaking is completed.

Patience is not the only virtue we must apply to California water issues. Cooperation is just as important. For example, cooperation is the key to the new Bay/Delta Accord, agreed to last December, which has all the primary stakeholders on California water issues working together to solve the problems of the San Francisco Bay Estuary. The presence of the CVPIA was

crucial to the success of this complex agreement. Unfortunately, H.R. 1906 would undermine the agreement even before it has been fully implemented.

I am troubled by the fact that some members are attempting to take apart the 1992 Act piece-by-piece on other bills, such as the attempt through the budget process to shut down the San Joachim study before it reaches its conclusions on the feasibility of restoring the river. I assure you that any legislative alteration of the CVPIA will meet with the same strict scrutiny if it reaches the Senate.

Mr. Chairman, H.R. 1906 is the wrong bill at the wrong time. It imperils the Bay/Delta agreement which gives us the chance to work out water issues at the state level. Instead, Congress should be encouraging cooperative resolution for difficult resource issues. Revisiting the CVPIA at this early stage sends exactly the wrong message to those who look to Congress for certainty, fairness and good common sense.

TRINITY COUNTY

BOARD OF SUPERVISORS
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Dero B. Forslund, Clerk
Jeannie Nix-Temple, Administrative Officer

TESTIMONY OF TRINITY COUNTY, CALIFORNIA, IN OPPOSITION TO THE TRINITY RIVER PROVISIONS OF H.R. 1906

The Trinity County Board of Supervisors opposes the deleterious alteration of the Riggs Amendment to the Central Valley Project Improvement Act which is proposed by H.R. 1906. The alteration does nothing to improve the Trinity River Flow Decision addressed by the Riggs Amendment (Section 3406(b)(23)), and is a thinly veiled attempt to delay implementation of that vitally important decision. The alteration would add needless bureaucratic procedure, paperwork, and costs onto an already open, public process that has taken nearly 15 years and millions of dollars to complete. Continued delay of the Interior Secretary's 1996 Trinity River Flow Decision is, in essence, continuance of a "taking" against the people and economies of Trinity County, the Klamath-Trinity basin, and the Northern California-Southern Oregon coastal region.

When the Trinity Division was proposed in the 1950s, the people of Trinity County were promised that "not one bucketful" of Trinity River water necessary in the basin would be exported for CVP use. We were promised our economy would be improved. Instead, since completion of the Trinity Division in 1963, we have seen 90% of the Trinity River flow at Lewiston exported out of the basin, with devastating impacts to the local and regional economy from depressed fish populations and an altered ecosystem. For the past five years, the Trinity River fall king salmon run has not met minimum escapement levels for returning adult spawners. Fishing regulations have tightened to the point that catch and release is, at times, our only fishing opportunity. The results are measurable in business closures, high unemployment, and pervasive federally-caused economic anemia.

In recent years our local economy has also been devastated by the severe decline in the timber industry as a result of the listing of the spotted owl and other environmental restrictions. Altering the Riggs Amendment and thereby postponing a therapeutic flow decision will depress our timber industry even further, by shifting the emphasis of fishery restoration efforts towards even more otherwise unnecessary restrictions on watershed land use, and undermining significant collaborative efforts by timber and other interests to restore fish populations without additional regulation. The 1996 Trinity River Flow Decision is one of the bright spots in our precarious economic picture, providing some hope of better times to come in the two industries which sustain us.

Under the CVPIA, the Interior Secretary will make his decision on permanent Trinity River instream flows and Trinity Division operating criteria by December 31, 1996. The flow decision is being comprehensively evaluated in an environmental review process pursuant to the National Environmental Policy Act and the California Environmental Quality Act. Trinity County, the Hoopa Valley Tribe, the U.S. Bureau of Reclamation and the U.S. Fish and Wildlife Service are the lead agencies for the "Trinity River Mainstem Fishery Restoration Environmental Impact Statement/Environmental Impact Report"- (Trinity EIS/EIR). There are several state, federal and tribal agencies cooperating with the lead agencies to develop a meaningful analysis of the flow decision. As required by NEPA and CEQA, the flow decision

will be analyzed along with other possible alternatives to meet the fishery restoration goals of P.L. 98-541 and to meet the Federal trust obligation to the Hoopa Valley and Yurok tribes. This is an established, science-driven process into which millions of dollars have already been invested; the public is fully engaged, and there will be numerous opportunities for public review and input. We expect the Trinity EIS/EIR to be a model of federal, tribal and local cooperation on an issue of local, regional and national significance.

Application of an Administrative Procedures Act review to the Trinity River Flow Decision is politics at its worst and contrary to the promise of the Contract With America to reduce red tape and the cost of government. It is obvious from earlier drafts of this bill circulated by the Central Valley Project Water Association that the real intent is to cap Trinity River flows at the current minimum of 340,000 acre feet per year and indefinitely delay the Trinity River Flow Decision. A rulemaking hurdle, especially with a mandated minimum comment period, would confer an open-ended opportunity to delay and perhaps derail the permanent flow decision, and it would require more federal money to engage. It would not confer opportunities for the public, including the CVP contractors, to comment and shape the decision beyond those otherwise afforded by the environmental review process which is already underway. Indeed, the EIS/EIR review will examine a broader range of alternatives, economic factors and analyses than would a rulemaking proceeding. We know this to be true because Trinity County, as a lead agency in the environmental review, is actively shaping the scope and content of that review.

What sense does it make to go through a public review and comment process under NEPA for two years and then require the Secretary to go through another public review and comment process under the APA on a narrower range of the same issues? This is, at best, needless bureaucratic inefficiency.

Another alteration of the Riggs Amendment which we strenuously object to is the proposed deletion of the word "and" at the end ofthe first sub-paragraph of Section 3406(b)(23). That deletion disassociates the 1996 flow decision from the requirement to meet P.L. 98-541 fishery restoration goals and the Federal trust responsibilities to the Hoopa Valley Tribe.

The question of whether the permanent flows should vary according to hydrologic and reservoir storage conditions should be decided on the basis of the scientific studies which are nearing completion, not by political fiat. However, we understand that the proposed flow decision and Trinity Division operating criteria will vary according to 5 different water year types and reservoir carryover storage conditions.

In conclusion, we urge the subcommittee to delete any references to the Trinity River from H.R. 1906. The existing process is working well and we do not see anything positive in the proposed CVPIA amendment relative to the Trinity River. The 1996 Trinity River Flow Decision should not be subverted- it is an established process which is intended to make right the wrongs of the past. Let's continue to work on solutions to these complex problems by using science and the existing regulatory framework, not political chicanery and deceptive regulatory roadblocks to progress. Please don't compound the problems of the Trinity River fishery with this proposed legislation. Thank you.

Approved July 18, 1995

Ross Burgess

Ross Burgess, Chairman
Trinity County Board of Supervisors

City of Redding

DAVID A. KEHOE
Mayor

July 17, 1995
L-040-070

Honorable Wally Herger
U.S. House of Representatives
2433 Rayburn House Office Building
Washington, D.C. 20515

Subject: HR 1905: Proposed Central Valley Project Reform Act of 1995

Dear Congressman Herger:

Thank you for your recent request for the City of Redding's comments on the subject legislation. The proposed legislation is of interest to Redding as it affects both our water and electric customers. We are pleased to know that Congress is moving ahead with legislation to provide much-needed clarification regarding Congressional intent for implementation of the CVPIA.

The proposed legislation would certainly be beneficial for Redding's water customers, and we appreciate your diligence to protect county-of-origin rights. From Redding's electric customers' point of view, the net effect of the bill is not clear. The current form of the bill leaves uncertain the amount that power customers may ultimately be required to pay to the Restoration Fund.

Redding suggests that the bill be modified to provide power customers the same kind of assurance that water customers will have regarding a maximum limit on payments to the Restoration Fund. We understand that the Northern California Power Agency (NCPA) will soon be providing specific language changes to appropriately limit power customers' funding obligations. We respectfully request that you support NCPA's changes.

Thank you for your consideration of Redding's interests.

Sincerely,

David Kehoe, Mayor
City of Redding

RC\252.95

c: City Council

July 17, 1995

Wally Herger
419 Hemsted Drive, Suite 115
Redding, CA 96002

Dear Wally,

Your letter mentions area of origin rights. I find no mention of it in the draft of bill, 1906. Realizing how little clout North State electorate has, I cannot express too strongly that this needs to be addressed in this bill. Northern California is entitled to straight language that water rights will not be involved in any way.

Page 19 - lines 21 through 24. I would change to: STRIKE LINE 21 - 22 thru 24 to read. The secretary shall be required to operate the project at all times in a way that will never jeopardize human health, welfare, or safety.

ON CONTRACTS: Page 4 line 14 thru page 6 line 13 - is all hog wash. That is written so that in arbitration any contract could be invaded - contract would be of no value. For God sake Wally, make a contract a contract not a means by which a technocrat can push or muscle a situation around to his or her liking.

ON TRANSFERS: A situation we have in the area shows that section is a joke. Line 20 thru 25 shows the technocrat at it again.

One must remember that the whole thing is written for the large user. The pressure they can bring to bear is much more than we the small user. The language must be extremely protective of the small user. This bill does not reflect that, as I read it.

Sincerely,

Ted Neville
10242 Victoria Drive
Redding, CA 96001-9410

Statement of
Daniel P. Beard
Commissioner, Bureau of Reclamation
Department of the Interior

on H.R. 1906
Central Valley Project Reform Act of 1995

before the
House Subcommittee on Water and Power Resources
July 20, 1995

Thank you for the opportunity to present the Administration's views on H.R. 1906, the Central Valley Project Reform Act of 1995.

As I will explain in my testimony, the Administration believes the bill is premature at this time. Less than three years ago, the Congress passed by overwhelming margins, and President George Bush signed, the Central Valley Project Improvement Act (Title XXXIV of P.L. 102-575). The CVPIA is a good law, balancing the needs of Central Valley Project customers including agricultural interests, power users, conservationists and urban areas as well as recognizing the trust responsibility to Native Americans. The law acknowledged that all these sectors have a legitimate interest in the Central Valley Project.

Supported by a broad coalition of urban, business, industrial, environmental and editorial organizations, the CVPIA was the culmination of a 15 year battle to insure the Central Valley Project was operated in a manner more consistent with California's current diverse needs.

We believe that implementation of Title XXXIV continues to progress significantly. Throughout our efforts to implement the CVPIA, we have met frequently with our stakeholders. About one year ago, we held a series of public meetings where we solicited comment on the need for creating an advisory committee for implementation. Based on the feedback we received, we determined there was not widespread support for an advisory committee. We agreed, however, that the key to our success would be to establish a good, workable process that gives all stakeholders and the public the opportunity to impact significant decisions. We have continued to reach out to all stakeholders and the public.

We agree with the view of many water users that it is premature to amend the CVPIA. We recognize, however, that not all water users are happy with the law. In response, we have begun to take steps to administratively correct some of the problems water users have expressed.

In fact, many of the provisions in H.R. 1906 have been or could be addressed administratively without the need for additional legislation. For example, Section 8(j) of H.R. 1906 directs the Secretary of the Interior to coordinate with the State of California in implementing measures to resolve problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. In accordance with the Bay Delta Accord signed by the Department of the Interior, the State of California, the Department of Commerce, and the Environmental Protection Agency. December 15, 1994, we are already working with the State of California on this. The Bay/Delta Accord was supported by agricultural, urban, business and environmental interests and moved the parties toward resolution of issues that have been the source of conflict in California for many years. H.R. 1906 would undermine the Accord and negate the progress to date.

Here are a few of the administrative actions we have already taken, making adoption of additional legislation unnecessary.

- MEASUREMENT OF WATER USE REQUIRED. Section 5(f) would clarify that water meters, while not prohibited, also are not required on surface water delivery systems. We have already clarified this in 42 interim contracts with our contractors.

- COMPLIANCE WITH RECLAMATION REFORM ACT. Section 5 would clarify that compliance with the water conservation guidelines and criteria in the CVPIA also would be deemed to meet the requirements in Section 210 of the Reclamation Reform Act. The Bureau of Reclamation has already stated this position in a letter sent to interim water contractors.

- ACQUISITION FROM WILLING SELLERS -- Section 7 stipulates that funds appropriated for acquisition of water or habitat shall only be used in purchases with willing sellers. All the water that Reclamation has purchased under the authority of the CVPIA for use at wildlife refuges, such as Sacramento and Delevan, or for fishery purposes has come from willing sellers exclusively.

The Department recognizes the need to be flexible and work with stakeholders to maintain the consensus we reached in California last December. In addition to the administrative steps we have already taken in response to concerns expressed by agricultural water users, we recognize that we can do more.

For example, the provisions in paragraph (5) on page 33 of H.R. 1906 would mandate a 25 percent reduction in water deliveries to refuges during a drought, rather than merely authorize such a reduction, as the current law provides. The Department believes administrative actions will achieve the same result. For example, earlier this water year, we used an

integrated management approach for the use of Section 3406(b)(2) water. Using the authority in the CVPIA, we prepared a plan which will enable us to meet fish flow requirements and the needs of our customers. This approach has permitted us to apply the available maximum of 800,000 acre feet of dedicated water, and obtain additional water using monies available from the restoration fund. We are currently meeting the fish flow requirements and intend to allow remaining water to be used for other project purposes. The Department, by taking these administrative actions, can achieve the results sought in H.R. 1906.

The Department does not, however, agree with many of the provisions of H.R. 1906 which we believe, if enacted, would jeopardize the consensus reached in water policy in California. For example, we oppose the provision in paragraph (4) on page 33 of H.R. 1906 which would make all taxpayers -- as opposed to only the Central Valley Project beneficiaries -- pay the costs associated with the delivery of water to refuges. We believe that those who benefit from the Central Valley Project should bear the mitigation costs.

The Department opposes provisions in Section 3 which would eliminate all environmental restoration goals for striped bass, sturgeon and American Shad. All are important to the commercial and sport fisheries industries, and important indicators of the overall health and productivity of the ecosystem.

The Department also opposes provisions in H.R. 1906 which would cap at 340,000 acre feet the instream flows of the Trinity River. In addition, Section 6 would subject future flow decisions based on the U.S. Fish and Wildlife Service's Trinity River Flow Evaluation Study to another formal rulemaking. The Department already has a public process underway. We are nearing completion of the Trinity River Flow Evaluation Study evaluating the fish and wildlife needs and instream flows in the Trinity River. Once the study is completed, the Department, based on scientific evidence, will be in a position to evaluate how much water is needed in the Trinity River. An additional rulemaking will add an unwarranted and costly level of review to a process that has enjoyed and continues to enjoy tremendous public participation, and that will be subject to additional public involvement over the coming months as we prepare a full environmental impact statement.

The Department has been taking the necessary steps to implement the CVPIA. The Department also has responded to water users' concerns by making appropriate administrative changes and is willing to continue to meet with stakeholders to make additional changes. We survived the fourth worst drought in history while the CVPIA was in-place. We are now in an era of surplus and the CVPIA continues to work. At this juncture we see

no reason to reopen the Act.

Simply put, we think H.R. 1906 is premature and unnecessary. The legislation threatens the historic consensus that has brought together all stakeholders in California's water issues. H.R. 1906 could undermine the landmark Bay-Delta Accord signed by the state and federal governments on December 15, 1994, as well as the joint state-federal long-term Delta planning process now taking shape.

In addition, the Administration is concerned that reopening the CVPIA -- that is, revisiting who gets how much water for what purpose, at what price and under what conditions -- will lead to the return of gridlock in California's water policies. To jeopardize the hard-won consensus will be harmful to the overall economy in California. Just a few months ago, Standard and Poors said that the water accord was responsible for stabilizing the credit quality of most California water suppliers. Prior to the agreement, Standard and Poors had expressed concern that the Bay-Delta water supply was unreliable and could prompt some water providers to build costly capital projects, thus jeopardizing their credit ratings.

We view the CVPIA as an important initiative by Congress, which in tandem with the Bay Delta Accord, is bringing back a needed balance and certainty to the water picture in California. For the first time in the history of the Central Valley Project, under the CVPIA all stakeholders are working together to address California's water needs. At this point, we urge that the Congress give the CVPIA the opportunity to meet the objectives that Congress established less than three years ago.

Thank you again for the opportunity to testify. I would be happy to answer any questions you may have.

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

SUBCOMMITTEE ON WATER AND POWER RESOURCES

TESTIMONY

OF THE

BAY-DELTA URBAN COALITION

ON

H.R. 1906

JULY 20, 1995

CHAIRMAN DOOLITTLE AND MEMBERS OF THE SUBCOMMITTEE:

The members of the Bay-Delta Urban Coalition (Urban Coalition) thank the Subcommittee for this opportunity to present testimony on H.R. 1906, legislation to amend the Central Valley Project Improvement Act (CVPIA).

The Urban Coalition consists of ten large and diverse California urban water suppliers who have joined together to form and communicate common views with regard to administrative, regulatory and legislative actions affecting the Bay-Delta[1]. These agencies include:

- Alameda County Water District
- Central Coast Water Authority
- City and County of San Francisco, Public Utilities Commission
- Coachella Valley Water District
- East Bay Municipal Utility District

[1]Seven of the ten agencies listed above are also members of California Urban Water Agencies (CUWA), which is a separate, non-political organization that focuses primarily on coordination of technological and professional resources to address California's current and future water needs. CUWA takes no position on this or any other legislation.

- Metropolitan Water District of Southern California
- Municipal Water District of Orange County
- San Diego County Water Authority
- Santa Clara Valley Water District
- Solano County Water Agency

Two members of the Bay-Delta Urban Coalition, the Santa Clara Valley Water District and the East Bay Municipal Utility District, are Central Valley Project (CVP) water contractors, and proposed reform of the CVPIA would have direct financial and water supply impacts on them. Each Urban Coalition member has unique political circumstances and alliances which may influence, to some degree, the formation of a common urban position. For example, the Santa Clara Valley Water District is an active member of the Central Valley Project Water Association, the group of agricultural contractors which initiated drafting of H.R. 1906. The East Bay Municipal Utility District, on the other hand, is an active member of Share the Water, a major California environmental coalition currently opposed to any amendment of the CVPIA. The Urban Coalition brings together urban water suppliers in both northern and southern California, and includes the Metropolitan Water District of Southern California, this nation's largest water wholesaler. We believe that the diverse interests of Bay-Delta Urban Coalition members have enabled the Urban Coalition to provide a well-balanced response to H.R. 1906.

Three members of the Bay-Delta Urban Coalition are here today to testify: Mr. Robert R. Smith, Assistant General Manager of the Santa Clara Valley Water District; Mr. Timothy H. Quinn, Deputy General Manager of the Metropolitan Water District of Southern California; and Ms. Laura King, Environmental Affairs Officer of the East Bay Municipal Utility District. Mr. Smith and Mr. Quinn will be testifying on behalf of the Urban Coalition and Ms. King is available for questions.

Our greatest shared concern is to be able to provide a reliable water supply to California's growing population and dynamic economy. The members of the Bay-Delta Urban Coalition supply water to approximately 22 million people, or two-thirds of the state's population. Commerce and industry in the Urban Coalition's urban service areas generate over 11 million jobs, and over three-fourths of the state's $800 billion gross annual product. In fact, the California urban economies served by Urban Coalition member agencies generate roughly 10% of the total economy of the United States. Much of California's urban water supplies originate in the Bay-Delta watershed, and thus the Urban Coalition has an enormous stake in any legislative proposal which would affect the federal government's responsibilities and activities to resolve Bay-Delta issues.

We believe that the surest pathway, perhaps the only pathway, to reliable urban water supplies and stability in managing those water supplies, is a consensus approach. The Bay-Delta Accord, signed on December 15, 1994, is a prime example of such a consensus approach. It represented a significant step in protecting California's environmental resources and in providing water supply reliability to the state's urban populations and economies. The

three-year Accord was achieved through a consensus process that brought together urban, agricultural, and environmental interests, as well as state and federal government representatives. Both the Accord and the consensus process which created it provide a foundation upon which to build long-term resolution of Bay-Delta environmental and water supply issues. The Bay-Delta Urban Coalition is committed to preserving the institutional and political stability necessary to maintain the Accord, in order to allow the consensus process to move forward toward long-term goals.

A key factor in the stability of the Bay-Delta Accord is the CVPIA, which requires the federal government to dedicate annually over 1.3 million acre-feet (AF) of CVP water, to collect annually over $30 million from water and power contractors, and to carry out numerous programs and projects, all aimed at environmental mitigation, enhancement and restoration. The Bay-Delta Urban Coalition strongly supports the environmental purposes and goals of the CVPIA. In addressing administrative, regulatory or legislative proposals related to the CVPIA, the Urban Coalition's paramount objective is to maintain the environmental integrity of the CVPIA. The Urban Coalition also strongly supports the CVPIA's fundamental approach to the use of the CVP system, which includes (1) restoring balance among environmental, water supply and other project purposes, and (2) providing flexibility to meet urban as well as agricultural water supply needs more effectively.

In considering H.R. 1906, the Bay-Delta Urban Coalition first took a hard look at how the CVPIA has been implemented so far by the responsible federal agencies. Progress has been made on many of the programs and projects mandated by the CVPIA. However, it is evident that, despite good intentions, implementation has been hampered by inefficient coordination between state and federal agencies, lack of appropriate stakeholder involvement in decision-making, and disagreements over interpretation of specific legislative language and intent. These factors have led to reduced environmental benefits, and to substantial uncertainty for all CVP water users, particularly urban water agencies trying to assess the reliability of CVP water supplies and urban water agencies hoping to engage in a CVP water transfer market. The Urban Coalition believes that, if allowed to continue along its current path, CVPIA implementation will continue to deteriorate and eventually polarize Bay-Delta interests to such an extent that comprehensive resolution of long-term Bay-Delta problems will slip from our grasp.

Many, perhaps even most, of the implementation problems related to the CVPIA might be solved through improved administration. The burden is certainly on the federal agencies and policy makers to provide stronger guidance and more definitive administration in a timely manner. Some issues, however, might best be solved through amendments to the CVPIA. We also recognize that some administrative remedies benefit from statutory support, and because amendments now are being considered, these administrative remedies might also be usefully addressed in H.R. 1906.

The important thing is to continue to move forward to make the CVPIA, and the Bay-Delta Accord, a success. The Bay-Delta Urban Coalition intends to focus its efforts

on resolving as many CVPIA implementation problems as possible through administrative remedies. At the same time, with H.R. 1906 being introduced and the need for legislation likely, the Urban Coalition has worked hard to define a position on amendments to the current law which focus on preserving the environmental integrity of the original Act, establishing a more effective implementation process, and resolving the most fundamental problem areas.

The Bay-Delta Urban Coalition cannot support H.R. 1906 as introduced because it is not consistent with the urban position in a number of areas. Key concerns of the Urban Coalition with H.R. 1906 include:

- Unclear direction regarding the primary purpose, crediting, and reuse of water dedicated or reserved for environmental purposes.
- Weakening of federal involvement in anadromous fish restoration.
- Reductions in Restoration Fund revenues.
- No provision to establish a more effective implementation process.
- No definition of reliability for CVP urban water supplies.
- Establishing federal pre-eminence over water management on the upper San Joaquin River.

Despite these concerns, we believe that there is substantial potential to amend H.R. 1906 into a bill that the Bay-Delta Urban Coalition can support. The Urban Coalition has already met a number of times with agricultural, environmental and federal resource agency representatives to discuss appropriate administrative and legislative remedies to CVPIA implementation problems. The Bay-Delta Urban Coalition is committed to continuing these discussions with the goals of improving CVPIA implementation and, if possible, developing H.R. 1906 into legislation that can be more broadly supported by all affected interests.

The remainder of this testimony sets out the principal substantive elements of the Urban Coalition's position, along with summaries comparing H.R. 1906 and the urban position, including brief descriptions of major differences.

ENVIRONMENTAL INTEGRITY

Urban Coalition Position:

- The environmental integrity of the CVPIA must be maintained. Environmental projects and programs required by the CVPIA should be developed and implemented in a way that furthers the goals of the Act and the December 1994 Bay-Delta Accord.

- Environmental obligations of water and power contractors under the CVPIA should equitably reflect the environmental impacts of those contractors.

- Amendments to the CVPIA must not result in shifting an obligation that otherwise should be borne by the CVP to any other lawful water user.

- The environmental projects and programs required under the CVPIA should use sound science to develop and implement reasonably achievable projects or programs.

- Completion of the programmatic Environmental Impact Statement of Section 3409 of the CVPIA should be expedited.

Comparison with H.R. 1906:

While H.R. 1906 proposes some needed changes in CVPIA implementation, the Urban Coalition believes some of those changes compromise the environmental integrity of the CVPIA. The Urban Coalition proposes to improve CVPIA implementation and maintain the fundamental obligations to provide money and water to achieve the environmental purposes of the Act.

JOINT STATE-FEDERAL-STAKEHOLDER PROCESS

Urban Coalition Position:

- A joint State-Federal-Stakeholder process is necessary to assist the Secretary in decision-making regarding some or all of the provisions relating to the Restoration Fund, Anadromous Fish Restoration Plan, the 800,000 AF, and San Joaquin River restoration.

- The joint State-Federal-Stakeholder process should include formal stakeholder involvement by agricultural, agency (State and federal), urban, and environmental interests. The process would require that the Secretary give substantial deference to recommendations made through the process.

- Recommendations made by stakeholders through the joint State-Federal-Stakeholder process should be given authority through mechanisms such as the Federal Advisory Committee Act.

- To improve the efficiency of CVPIA implementation, the joint State-Federal-Stakeholder process should be coordinated with other Bay-Delta implementation groups such as CALFED.

- The joint State-Federal-Stakeholder process must include a dispute resolution process to ensure stakeholder involvement results in broadly supported, achievable recommendations to the Secretary.

Comparison with H.R. 1906:

H.R. 1906 does not provide for establishing a joint State-Federal-Stakeholder process that builds communication and trust between the implementing agencies and stakeholders. Many of the changes proposed by H.R. 1906 might be resolved administratively if such an effective process was established legislatively. The process would also better ensure that CVPIA implementation achieves a reasonable balance among the competing demands for CVP water.

URBAN WATER SUPPLIES

Urban Coalition Position:

- A minimum level of contract deliveries for municipal and industrial Municipal and Industrial (M&I) purposes should be at least 75% of contract quantity.

- The reliability of contract deliveries for M&I purposes should be consistent with the greater costs that are allocated to the M&I purpose relative to the irrigation purpose in current CVP cost allocations.

- The reliability defined for M&I water supplies through the CVP Reform Act should be provided under future renewed or amended contracts, and under existing contracts to the extent it does not conflict with existing shortage provisions.

- CVP agricultural water supplies that are converted or transferred to M&I use should retain the reliability of their original purpose.

Comparison with H.R. 1906:

H.R. 1906 does not address the need for certainty in urban water supplies. The Urban Coalition recognizes that the CVPIA's purpose of balancing competing demands for CVP water must include a minimum delivery standard for M&I contract amounts to reflect the greater cost paid for M&I supplies.

800,000 ACRE-FEET (AF)

Urban Coalition Position:

- The primary use of the 800,000 AF is for the purposes of environmental protection and restoration.
- Reuse of the 800,000 AF for water supply purposes should be allowed to the extent it does not conflict with other environmental requirements.
- The quantities specifically reserved by the CVPIA are: 800,000 AF under Section 3406(b)(2); Level 2 refuge supplies under Section 3406(d); and 340,000 AF of Trinity River water under Section 3406(b)(23) which may be increased pending completion of appropriate environmental documentation and a full public process.
- Additional water beyond these reservations to accomplish the environmental goals of the CVPIA must be obtained through purchases of water from willing sellers or other measures that do not involve involuntary reallocation of contract deliveries.
- Central Valley Project water obligations identified pursuant to the Bay-Delta Water Quality Control Plan (BDWQCP) in excess of D-1485, and identified after October 1992 pursuant to the Endangered Species Act (ESA), must be credited against the 800,000 AF.
- The 800,000 AF is not a limitation on CVP water obligations established by the BDWQCP, ESA or other regulatory actions.
- Water released to satisfy the obligation to deliver 800,000 AF can not be required as Delta outflow unless such requirement would achieve a specifically identified environmental benefit.
- The Joint State-Federal-Stakeholder process should be used to ensure the 800,000 AF provides the maximum environmental benefit.

Comparison with H.R. 1906:

The language of H.R. 1906 does not make clear that the 800,000 AF is reserved for the primary purpose of environmental protection and restoration. H.R. 1906 also overly restricts use of the 800,000 AF for Delta outflow, and could allow reuse of the 800,000 AF for contractor deliveries even if it negatively impacts the environment. The concept for crediting the 800,000 AF expressed in H.R. 1906 is consistent with the Urban Coalition position, however, the language requires clarification to eliminate possible interpretation problems.

ANADROMOUS FISH RESTORATION PROGRAM

Urban Coalition Position:

- Restoration of anadromous fish in the Bay-Delta should be a joint State-Federal responsibility, and there should be a federal contribution toward meeting restoration goals.

- One joint State-federal fish restoration program should be developed and implemented by a joint State-Federal-Stakeholder body with formal stakeholder involvement in the process to ensure reasonable, prudent, and feasible methods and priorities for fish restoration.

- The anadromous fish restoration program should be based on sound science. The program should focus on restoration of native anadromous fish, and include an ecosystem approach toward all species.

- The goal to double anadromous fish production should be reevaluated upon completion of technical analyses of options for meeting the goal. To the extent the doubling goal cannot be reasonably achieved, the doubling goal should be considered satisfied by the reasonable efforts which most closely achieve the goal.

- Consistent with the CVPIA, the program should give priority to measures that protect and restore natural channel and riparian habitat values through habitat restoration actions and modification in CVP operations.

- The anadromous fish restoration program should include viable hatchery stocks in addition to increased natural production. Modern hatchery facilities, production techniques, and transfer of fish stocks may be used to rebuild fish stocks where natural production alone is unable to achieve the doubling goal of the anadromous fish restoration program.

Comparison with H.R. 1906:

H.R. 1906 basically removes the federal obligation to double anadromous fish by requiring the Secretary of Interior only to "assist" the State in achieving its anadromous fish restoration goals. The Urban Coalition retains the federal obligation in a more definitive way by requiring a joint State-federal anadromous fish restoration program.

RESTORATION FUND

Urban Coalition Position:

- The uncertainty of Restoration Fund money should be eliminated. $35-$40 million annually should be made available through adjustments to the $6 and $12 Restoration Payments paid by CVP water contractors, and adjustment to contributions from power contractors. Such payments and contributions should equitably reflect the environmental impacts of water and power contractors.

- Decreases in revenues to the Restoration Fund should be offset by increases in other Restoration Fund payments.

- The State and federal restoration funds should be coordinated. The coordinated funds should be administered by a joint State-Federal-Stakeholder body with formal stakeholder involvement.

- Expenditures from the coordinated fund should be flexible and not restricted by pre-determined formulas for flow and non-flow related measures (i.e. the 66/34 split for expenditures of Restoration Fund monies) provided that an appropriate priority setting system for Restoration Fund expenditures is developed through the Joint State-Federal-Stakeholder process.

Comparison with H.R. 1906:

H.R. 1906 eliminates tiered water rates and contact renewal surcharges which may decrease Restoration Fund revenues. The Urban Coalition supports these changes but believes that any resulting reductions in Restoration Fund revenues must be replaced in a manner sufficient to accomplish the environmental objectives of the CVPIA. The Urban Coalition will work with water and power contractors and other stakeholders to determine appropriate adjustments to compensate for lost revenue.

SAN JOAQUIN RIVER

Urban Coalition Position:

- A San Joaquin River plan that includes formal stakeholder input as part of a joint State-Federal-Stakeholder process and optimizes benefits to fish and wildlife should be developed. The plan should consider a broad range of alternatives, but focus on only those alternatives that are the most reasonable, efficient, and readily achievable, giving consideration to restoration activities identified in previous San Joaquin River studies. The plan should be coordinated with the activities identified in the joint State-federal program to restore anadromous fish. Direct releases from Friant Dam intended to achieve the purposes of the CVPIA should be excluded from the scope of the plan.

- Unless approved by Congress, releases from Friant Dam for specific CVPIA purposes should not be required. Notwithstanding this provision, a) Friant Division must meet its water release obligations in the San Joaquin Basin (i.e. contribution to downstream flow requirements including Bay-Delta requirements) through alternative means, and b) Friant Division must meet its financial obligation toward habitat restoration of the lower San Joaquin River.

- No exemptions from State law or federal law should be provided.

- The Friant Surcharge should not be capped and should be indexed to retain its value over time. The Friant surcharge should be assessed on all water actually delivered other than flood water delivered under Section 215 of the Reclamation Reform Act.

- Restoration Fund surcharges paid by the Friant Division should be used only for environmental restoration purposes in the San Joaquin River watershed from Friant Dam through the Bay-Delta. Use of such funds must result in benefits to fishery and ecosystem resources in the San Joaquin River watershed.

Comparison with H.R. 1906:

The proposal in H.R. 1906 to remove the upper San Joaquin River from the purview of State law is a key concern of the Urban Coalition. The proposal in H.R. 1906 to eliminate the San Joaquin River Comprehensive Study is also a concern. The Urban Coalition believes that a San Joaquin River study developed through a joint State-Federal-Stakeholder process is needed. Such a plan should focus on alternatives that do not require releases from Friant Dam for CVPIA purposes. H.R. 1906 also contains amendments that would reduce the Friant Unit's financial contributions to the Restoration Fund, and the Urban Coalition believes contributions should be maintained at a level consistent with their obligation for environmental restoration.

CONTRACTING POLICIES

Urban Coalition Position:

- New contracts should be allowed only if the Secretary determines sufficient water is available after all existing environmental (including completion of the programmatic Environmental Impact Statement (PEIS) required under Section 3409) and contractual obligations have been met.

- Interim contracts should continue without mandatory renegotiation and renewal every two years, but a finite ending date should be specified relative to completion of the PEIS (e.g. within two years of filing Notice of Completion of the PEIS).

- Long-term contracts should be renewed on a non-discretionary basis for successive 25 year periods upon request by contracting districts, provided the terms and conditions of those contracts, including price and quantity, are renegotiated at each renewal. In addition to any other appropriate environmental review, an assessment of the impacts of renewal including the impact on availability of urban water supplies should be performed for each 25 year renewal.

- The contract renewal surcharge should be eliminated, but decreases in revenues to the Restoration Fund should be offset by increases in other Restoration Fund payments.

Comparison with H.R. 1906:

H.R. 1906 proposes to reduce contract uncertainty by guaranteeing contract renewal for 25 year terms. The Urban Coalition supports this change but requires that contract renewal must remain subject to negotiation of terms and conditions to reflect changing environmental and urban circumstances over time. H.R. 1906 is consistent with the Urban Coalition position in eliminating contract renewal surcharges, but resulting reductions in Restoration Fund revenues must be compensated.

WATER TRANSFERS

Urban Coalition Position:

- Transfers, exchanges and banking arrangements that could have been accomplished prior to enactment of the CVPIA and that result in good water management should not be inhibited or rendered ineffective by administrative requirements.

- District review and approval or denial of proposed water transfers are appropriate if based on reasonable and objective criteria identified in a water transfer program developed by the district or the Secretary.

- Districts should be obligated to develop and implement a water transfer program that facilitates water transfers under all hydrologic conditions if a formal request to transfer water is submitted by a district landowner.

- The Secretary should establish a model water transfer program that districts may use in developing their own water transfer program, and which, in the absence of a district developed water transfer program, will be used by the Secretary to review and approve or deny proposed water transfers.

- An appropriate and timely appeal process to the Secretary should be provided to review the objectivity and reasonableness of district water transfer programs and to review the application of those criteria in deciding to approve or deny proposed water transfers.

- Districts that approve transfers based on groundwater substitutions are required to prepare and implement a groundwater monitoring and response plan that ensures the transfer has no significant long-term adverse impacts on groundwater conditions.

- Transfers of prior rights water should be subject only to the $25 per acre-foot Restoration Fund fee.

- Exercise of the right of first refusal on water transfers outside the CVP service area should be continued.

Comparison with H.R. 1906:

H.R. 1906 is consistent with the Urban Coalition position in providing that water districts should have the primary role in reviewing and approving transfers, and that historic water transfers should be allowed to continue without increased administrative burden. H.R. 1906 proposes to eliminate the role of the Secretary of Interior in reviewing and approving water transfers except with regard to their impacts on the ability of the CVP to meet environmental obligations. This role appears to be too limited. The Urban Coalition believes that the Secretary has an obligation to facilitate water transfers and should be available for appeal to ensure that transfers are accomplished fairly and appropriately.

REFUGE SUPPLIES

Urban Coalition Position:

- Refuge water supply requirements should be reevaluated and increased or decreased accordingly to provide the appropriate firm water supplies needed to maintain and improve wetland habitat areas based on the best available science.

- Measurement of water deliveries and implementation of best management practices should be required.

- In order to minimize impacts on water contractors, the Secretary should be required to consider use of non-federal facilities for conveyance, provided that use of any non-federal facility is subject to approval by its owners, operators, and contractors.

- Providing Level 2 water supplies should be a reimbursable expense. Acquisition of Level 4 incremental supplies should be a Restoration Fund or non-reimbursable expense.

- Shortages to refuges should be limited to 25%. The Secretary may impose shortages based on hydrologic or regulatory circumstances.

Comparison with H.R. 1906:

H.R. 1906 proposes to reevaluate the firm water needs of Central Valley wildlife refuges, and the Urban Coalition supports this reevaluation, provided that minimum deliveries may increase or decrease accordingly. H.R. 1906 also directs the Secretary of Interior to consider use of non-federal facilities to deliver refuge supplies and the Urban Coalition supports use of non-federal facilities if approved by the facility's owner, operator, and contractors.

TRINITY RIVER

Urban Coalition Position:

- Trinity River flows made available for environmental purposes should be 340,000 AF until the Trinity River Flow Evaluation Study and Environmental Impact Statement are complete.

- Prior to any decision to increase or decrease the 340,000 AF reserved for the Trinity River, a full public process should be required that includes formal stakeholder involvement.

Comparison with H.R. 1906:

H.R. 1906 would amend the CVPIA by removing the ability of the Hoopa Valley Tribe and the Secretary to increase Trinity River reserved flows without a public process separate from the environmental review process. The Urban Coalition supports stakeholder input in a full public process.

CONSERVATION

- Water conserved by contractors or refuges should accrue to the benefit of the contractor or refuge implementing the conservation measures, to the extent consistent with State law, and provided that refuge supplies do not exceed Level 4.

- Water management measures required by the CVPIA should be based on measures that have demonstrated significant water conservation benefits and efficient management of water resources similar to those in the efficient water management program without unreasonably burdening contractors, and with appropriate consideration of each contractor's applicable circumstances.

- Tiered water rates are not an appropriate water management tool for all contractors, and the requirement of tiered water rates in new long-term contracts should be eliminated. Tiered water rates should be eliminated as a mandated program but retained as a conservation option available to meet conservation requirements. Decreases in revenue to the Restoration Fund should be offset by increases in other Restoration Fund payments.

- Conservation and water management requirements should apply equally to contract and to environmental water deliveries.

- Conservation plans should be reviewed by the U.S. Bureau of Reclamation expeditiously.

Comparison with H.R. 1906:

H.R. 1906 would amend the CVPIA by eliminating mandatory tiered water rates. The Urban Coalition agrees that tiered water rates should be an optional conservation measure for districts where they are an effective water management tool, provided that resulting reductions in Restoration Fund revenues are compensated.

STANISLAUS RIVER

- The impact of the CVPIA on water supplies for Stockton East Water District should be evaluated.

Comparison with H.R. 1906:

Changes proposed by H.R. 1906 require the Secretary of Interior to identify the water supply impacts of the CVPIA and provide replacement water to entities that have contracted for water from the New Melones Project. The Urban Coalition supports identification of CVPIA impacts.

Conclusion

The Bay/Delta Urban Coalition has proposed what we believe to be constructive and reasonable modifications to this important piece of legislation. We hope to continue to be a part of the discussions to improve the implement of the Central Valley Project Improvement Act.

Again, thank you very much for this opportunity to testify before the Subcommittee. We will be pleased to answer any questions you may have.

Testimony of
Daniel G. Nelson
Executive Director, San Luis and Delta-Mendota Water Authority
Before the Subcommittee on Water and Power

Regarding H.R. 1906, the Central Valley Project Reform Act

U.S. House of Representatives
Washington, D.C.
July 20, 1995

Mr. Chairman, and Members of the Subcommittee:

Good morning, my name is Dan Nelson, I am the Executive Director of the San Luis & Delta-Mendota Water Authority, (the Authority).

The Authority is comprised of 31 water agencies generally on the west side of the San Joaquin Valley and extending into San Benito and Santa Clara Counties. Member agencies have contracts to receive a total of 3.3 million acre feet of water annually from the Central Valley Project. These agencies deliver water to about 1.3 million acres of the most efficiently irrigated farm land in the world, and to an urban population of about 500,000 people. They also provide water to more than 75,000 acres of Pacific Flyway waterfowl habitat.

Since enactment of the Central Valley Project Improvement Act (CVPIA) in October of 1992, we - the customers of the CVP, and others - have struggled along with the federal agencies to implement the law. Water users have participated in literally hundreds of meetings with agency personnel and other stakeholders trying to achieve workable, effective and efficient implementation of the CVPIA.

At the same time, our Authority continues to be extremely active in working on Bay-Delta issues. Our involvement in Bay-Delta issues has helped us focus on new and better approaches for implementing water policy and solving problems.

We and the Bureau agree that there are many problems with the implementation of the CVPIA. Commissioner Beard has outlined several of these problems. Where we differ is on how to solve them.

Water users believe that amending the CVPIA to provide certainty and clarity for all parties is the best solution. The Bureau, on the other hand, says: "Trust us. We'll do the right thing....eventually."

Well, we've already tried to do it the Bureau's way and it hasn't worked very well. The Bureau has strongly resisted improving its implementation of CVPIA, and the improvements that have been made have come only after long, tough struggles. In

fact, the Bureau has shown real enthusiasm for administrative remedies only since water users began seeking legislative solutions.

As a result of our experience, we have seen a need for changes in policy direction relative to implementation of the CVPIA, as well as for changes in certain legislative directives outlined by the CVPIA. HR 1906 would provide badly needed clarification and direction for the responsible federal agencies so that environmental improvements and activities can be implemented promptly and effectively.

I want to spend a few moments to address the kinds of things that HR 1906 does -- and to clarify what it doesn't do.

1) HR 1906 reserves **800,000 acre feet** of CVP water for system-wide fisheries protection, mitigation and restoration measures. This water would be used to meet ESA and Bay/Delta water quality needs as well as other environmental obligations. After the water has fulfilled its environmental purposes, it would be available for re-use by CVP customers.

2) HR 1906 requires CVP customers to continue paying more than $30 million per year into a **Restoration Fund**. This money is earmarked for environmental restoration, protection and mitigation activities - including physical and operational changes to the CVP, acquisition of water, etc.

3) HR 1906 continues to require implementation of many **specific fishery improvements** intended to restore or enhance Central Valley fish production. The bill also obligates the Interior Department to work jointly with the State in pursuit of California's **"fish doubling"** goal. H.R. 1906 also maintains Trinity River fish flows of <u>at least</u> 340,000 acre-feet annually while the need for additional flows is studied.

4) HR 1906 maintains existing guarantees of **firm water supplies for wetland habitat,** and the bill continues to give wildlife refuges priority over agricultural users during shortages.

5) HR 1906 continues to authorize **water transfers outside the CVP service area** in a manner that ensures that they are feasible. It also clarifies that transfers within the CVP service area can continue unimpeded by bureaucratic delays.

In short, H.R. 1906 continues to provide more than 1.3 million acre-feet of water and tens of millions of dollars annually for environmental protection, enhancement and mitigation. Clearly, H.R. 1906 is not a "roll back" to the pre-CVPIA days. It is not a "gutting" of the law. If it were, there

would be no water or money for the environment.

In fact, the provisions of HR 1906, combined with operations under the Bay/Delta agreement and ESA provisions, will result in water users in our area receiving only about 70 - 75 percent of their contract supply in average years. Only in flood years would we again receive our full contract entitlement.

Bay-Delta Process

As a participant in, and signatory to, the Bay-Delta process and accord, I want to reaffirm our commitment to the accord and its full implementation and to affirm that HR 1906 is not inconsistent with the Bay-Delta agreement.

By better focusing the CVPIA toward implementation of environmental improvements, HR 1906 is intended achieve those improvements in a manner that is coordinated with state and local efforts, such as CALFED and Bay/Delta. HR 1906 could indeed enhance the Bay/Delta accord with more timely implementation and better coordination of implementation.

Conclusion

The only people who say that the CVPIA is perfect are the people who wrote it. I guess it's only natural for them to feel that way.

But those who actually have to live with the law -- California's agricultural and urban water agencies -- are asking Congress to make some reasonable improvements to CVPIA.

H.R. 1906 is reasonable, despite all of the white hot rhetoric to the contrary. It attempts to bring balance and certainty to an important element of the overall solution to California water problems. Without that balance and certainty, progress on long-term solutions will be difficult, if not impossible.

The customers of the CVP strongly support H.R. 1906, but we acknowledge that it can be improved. For example, the ideas put forward by the Urban Coalition are very good, and we look forward to working on them with the Coalition and the Committee.

We will work with any and all parties who want to rise above the rhetoric and make a genuine effort to ensure that the Central Valley Project fairly meets the needs of all Californians.

Thank you Mr. Chairman. I have a some additional written material that I would like to submit for the record later.

Testimony of Thomas J. Graff
Senior Attorney, Environmental Defense Fund
on H.R. 1906,
The Central Valley Project Reform Act of 1995

before the

United States House of Representatives
Committee on Resources
Subcommittee on Water and Power Resources
The Honorable John Doolittle, Chairman

Washington, D.C.
July 20, 1995

Mr. Chairman and Members of the Subcommittee: I am Thomas J. Graff, Senior Attorney of the Environmental Defense Fund (EDF). I very much appreciate your invitation to testify here today. My principal purpose in testifying is to express EDF's strong opposition to H.R. 1906. As the critique attached to this testimony sets forth, our objections to H.R. 1906 go to the very heart of the bill. We simply do not believe any bill amending the Central Valley Project Improvement Act (CVPIA) is appropriate at this time and we have very specific problems with the bill that has been introduced.

This is my first opportunity to appear before this subcommittee in the 104th Congress which, as you know much better than I, has an unusually large number of new members and a new majority party. For these reasons, before I begin a specific discussion of the CVPIA and H.R. 1906, I hope you will find it useful to you for me to relate a bit of EDF's and my own history, with respect to water resources policy, especially as it affects the Central Valley Project (CVP) and more specifically the CVPIA.

I helped open EDF's West Coast office in August, 1971 and within a year was actively involved in several major actions involving two large Congressionally-authorized additions to the CVP, the New Melones Dam on the Stanislaus River and the Auburn-Folsom South project on the American River. These actions (litigation and related administrative proceedings) dominated EDF's and my own activities respecting the CVP for much of the 1970s. As many of the subcommittee members may know, our activities did not prevent the construction of New Melones, although they did affect its operating regime. However, along with many other factors, notably including an earthquake (possibly

reservoir-induced) in the vicinity of the state-constructed Oroville Dam on the Feather River, they did contribute to the suspension of construction of the Auburn-Folsom South project.

One interesting and perhaps unexpected aspect of our role in these controversies was that EDF became a strong advocate of a states' rights position vis-a-vis the issue of state authority to regulate water rights in connection with these Congressionally-authorized projects. Indeed, in two cases which reached the U.S. Supreme Court, United States v. California (1978) and Environmental Defense Fund v. East Bay Municipal Utility District (1978), we were on the prevailing side of litigation which established that the state of California's laws control the operations of federal water facilities, subject to Congress' authority to override state law, only when it explicitly decides to do so. Among the Justices ruling in favor of EDF's position were Chief Justice Rehnquist of the U.S. Supreme Court and Justice Clark of the California Supreme Court (later appointed Secretary of the Interior by President Reagan), who wrote two opinions in EDF v. EBMUD for the state court.

Towards the end of the 1970s, however, it became clear to EDF and to me personally that a litigation-dominated strategy to reform federal water policy was at best insufficient and indeed in some significant respects counter-productive. It was in this period that the California water scene came to be dominated by the great Peripheral Canal controversy, culminating in a statewide referendum in June of 1982. The debate over the Canal split regions, constituencies, and political parties in California in a manner probably never seen before or since. For me, personally, however, it was a defining moment in my career as an environmental advocate. I found myself an active participant in a campaign managed by the political consulting firm of Russo and Watts (whose principals later became best known for their participation in campaigns to elect Governor Deukmejian and President Reagan). I also participated on a steering committee that oversaw the campaign which included representatives of two large agribusiness firms, the J.G. Boswell Co. and the Salyer Land Co., who also provided substantial financing for the anti-Canal position in the referendum. Ultimately, by a vote of more than 3 to 2 statewide, our position in the referendum prevailed, and the Peripheral Canal was blocked.

That campaign effectively lasted 5 years, from the date the first bill authorizing the Canal was introduced in the State Legislature and supported by then-Governor Jerry Brown. During that period, it became apparent to EDF that, although we might be partially successful in blocking large water projects by litigation and by joining many others in a political campaign, it was at least as essential to the accomplishment of our environmental objectives that we put forward affirmative alternatives. The key to our success was going to be that we not limit ourselves to promoting environmentally positive outcomes, but that we also meet the principal goals of the water development community, who had been our frequent adversaries over the prior decade.

This led us in the early 1980s to the publication of a major report entitled Trading Conservation Investments for Water: A Proposal for the Metropolitan Water District of Southern California to

Obtain Additional Colorado River Water by Financing Conservation Investments for the Imperial Irrigation District (1983). In this report, EDF strenuously argued for the greater introduction of economic (or free market) principles into the management of western water resources than had been the dominant paradigm up to that point-in-time. In very complete detail, we demonstrated that it was substantially less expensive for the Metropolitan Water District of Southern California (MWD) to obtain any supplemental water supplies it might need by buying water (or by investing in conservation measures) under the control of the Imperial Irrigation District (IID) (and by extension others similarly situated) than it was to build expensive new publicly subsidized water projects. We also demonstrated that private entrepreneurs within IID (and elsewhere) could make substantial sums of money by selling conserved water to MWD, without any loss of agricultural productivity whatever.

Initially, although we were supported by such conservative publications as the Wall Street Journal, The Economist, and the San Diego Union, our report was greeted with some skepticism by MWD, IID, and other prominent water leaders in California and in Washington, D.C. Eventually, however, by the end of the 1980s, a deal for a 100,000 acre foot annual transfer, nearly identical in broad outline to the one EDF proposed in 1983, had been concluded by MWD and IID. With this breakthrough, and the nearly contemporaneous establishment of a State Water Bank by the State Department of Water Resources, the era of water marketing had been launched in California, and the introduction of free market and economically rational principles to water resources management in the state had established a significant beachhead.

The 1980s also brought new controversies respecting CVP operations to the fore in the public's eye. The most notorious of these involved the Kesterson National Wildlife Refuge, which at the time was also the terminus for the infamous partially-constructed San Luis Drain. By early 1985 it was uncontested that the selenium-laden agricultural drainage return flows from Westlands Water District being conveyed in the Drain to Kesterson were causing massive bird deaths and deformities. As a result, in mid-March of 1985, then-Interior Secretary Hodel and Regional Director Houston of the Bureau of Reclamation announced the closure of the Drain, based on the Migratory Bird Treaty Act and other federal obligations to protect migratory waterfowl. EDF's response was to open discussions with Westlands regarding alternative means of handling drainage water, leading to a joint Westlands-EDF proposal in September 1985 for research on drainage solutions, which Congress approved in that year's Energy and Water Appropriations bill. Unfortunately, that initiative came to naught, as it was killed by the Interior Department early the next year on a legal technicality.

Other EDF water initiatives in the 1980s included our attempted intervention in a lawsuit on behalf of Secretary of the Interior James Watt, who at the time was engaged in a controversy with Westlands over the scope of the United States' water commitments to that district; our participation in the seminal consensus-based Coordinated Operation Agreement legislation of 1986; our collaboration with then-Representative Pashayan in the defeat of a bill sponsored by Representative Coelho to commit a new Bureau water supply to the Pleasant Valley Water District (an area dominated by one large

landowner, the Chevron Company); and a formal agreement concluded with the Berrenda Mesa Water District and its leading landowner, the Blackwell Land Company, headed in California by Mr. Ronald Khachigian, to promote water marketing by local districts within the service area of the Kern County Water Agency.

As the decade turned, EDF also became active on water issues with various groups representing big business in California, notably the Bay Area Economic Forum and the California Business Roundtable. During this period, the Bay Area Economic Forum published several studies, on its own and in collaboration with the Metropolitan Water District, which touted the importance of water marketing and water transfers and assessed their benefits and costs. EDF played a consultative role on these studies. Similarly, the Business Roundtable, led by high-ranking executives from, among other corporations, the Bank of America, Wells Fargo Bank, the Transamerica Corporation, Southern California Edison, and the Pacific Gas & Electric Co., published a set of principles which also endorsed water marketing as the touchstone for reform of water resource policy in California.

All this and much more provided the backdrop for the deliberations that led ultimately to the passage of the Central Valley Project Improvement Act of 1992 (CVPIA). From EDF's point-of-view, the CVP had for much too long caused substantial environmental damage, while delivering massive amounts of heavily subsidized water and power. Cost recovery to the federal taxpayers had been minimal, while public environmental resources were in precipitous decline. From the point-of-view of various business and urban organizations, the CVP, as the largest water project in California, was the most significant block to a true water market in the state. Indeed, perhaps most important, MWD saw the prohibition of CVP water marketing as a huge obstacle in the way of its obtaining access to the largest single source of water in the State of California, the CVP. For over 50 years, the CVP had been the exclusive province of a select group of contractor beneficiaries, nearly all within the Sacramento and San Joaquin Valleys, serving almost exclusively an agricultural clientele. Delivery of CVP water over the Tehachapi Mountains to Southern California, where three-fifths of the state's residents live, was out of the question.

The stage was thus set for a historic broad-based coalition to form, including not just representatives of environmental groups, big business, and urban water agencies, but Native American groups, waterfowl enthusiasts and duck hunters, sport and commercial fishermen, and family farmers. What resulted was the CVPIA, passed by Congress and signed into law by President George Bush on October 30, 1992.

With the passage of the CVPIA, the CVP became more environmentally sensitive. It embraced water marketing. And it expanded its basic constituency to include not only its historic beneficiaries but the wide range of interests impacted by the operations of California's largest water project.

Having said all this, however, let me be quick to note that while it is true that the CVPIA's passage may have been spurred by an urban-business-environmentalist coalition, it also was more than fair to the agricultural constituencies who had long been the CVP's prime beneficiaries. At the time the CVPIA was being debated, the complaints heard loudest from the agricultural contractors of the CVP involved the lack of certainty in CVP contracts, especially those surrounding CVP contract renewal. In response, the CVPIA established firm rules for long-term contract renewals.

The second loudest set of complaints from the CVP contractors involved their fears of an open-ended potential liability for meeting apparently insatiable environmental water demands. In response, the CVPIA established what the direct environmental water contributions of the CVP would be, including an 800,000 acre foot annual dedication of CVP yield to fishery restoration, a firm-up of state and federal refuge water supplies, and a confirmation of minimum releases to the Trinity River. Otherwise, however, the Act left to a system of voluntary environmental water acquisitions and investments in environmentally-oriented hardware the job of meeting the Act's environmental objectives.

Third, the CVPIA also produced a potentially huge economic benefit to the farmers who make up the CVP's core constituency by establishing the right not just of the water district contractors but of their farmer constituents voluntarily to transfer federal water at a profit. In a partial offset for this new right and economic benefit, the CVPIA did slightly reduce the contractors' historic subsidies by increasing the cost of the water and power sold by the CVP, notably raising base annual CVP agricultural water prices by $6/acre foot and urban water prices by $12/acre foot (both indexed to 1992 price levels). The revenues this generated were then dedicated, along with other increased revenues, to a CVP Restoration Fund whose overriding purpose is to help the CVP meet its Congressionally-mandated environmental objectives, as noted above, through the use of voluntary water acquisitions and other non-coercive means.

The CVPIA was the product of two years of intense legislative maneuvering and compromise. I personally had the privilege of being an active participant in the deliberations which led to the bill's passage. Indeed, during one crucial week in that history, a key representative of the CVP contractors and I were loosely authorized by then-stalemated legislators and our respective constituencies to explore possible avenues for bridging the gaps which divided our respective camps. On June 15, 1992, we released a joint legislative draft for open consideration by all involved parties. Regretfully, my CVP contractor counterpart was not permitted to join me in explaining the contents of that effort at a Congressional briefing scheduled for the next day, June 16. As a result, any momentum for an open comprehensive legislative coalition effort where the affected interests were actively involved in a cooperative spirit disappeared. Nevertheless, many of the concepts embedded in the infamous Somach-Graff draft legislation did survive in the CVPIA as passed. Moreover, the interests of the CVP contractors were actively considered and incorporated in the final version of the CVPIA, which ultimately passed the 102nd Congress.

I admittedly have gone to unusual lengths to explain this history of consensus efforts and negotiations leading to the passage of the CVPIA. I have done so because I thought it essential to convey to this subcommittee and others the point that the CVPIA is a statute which accommodates the interests of all the involved constituencies. Moreover, EDF, from the very first testimony we wrote on what became the CVPIA, emphasized that the interests of the historic beneficiaries had to be accounted for.

On the other hand, let me be clear about the current efforts of the CVP contractors to reopen the CVPIA compromise and to attempt to unscramble the "deal" which underlies its passage. This effort not only will undermine an excellent bill in its own right but many other efforts now underway in the state of California to move all the main constituencies in a positive direction oriented toward solving old water problems, not creating new ones.

Approximately one year ago, for example, my colleague David Yardas convened a group which has come to be known as the CVP Restoration Fund Roundtable. This Roundtable now consists of a wide variety of groups representing diverse agricultural, urban, business, power, and environmental constituencies. For the last eleven months, even in the midst of heavy contention over other, closely related, issues, the Roundtable has developed consensus-based recommendations for the funding of CVP restoration-oriented projects and for the management of the Restoration Fund. It also has provided a relatively "safe" forum for the responsible federal agencies (and their state counterparts) to discuss openly their restoration concepts and agendas.

A second, more widely noted, consensus effort in which EDF also played a significant role, culminated in the celebrated Bay/Delta Accord of December 15, 1994. This agreement settled the water quality standard and Endangered Species Act compliance obligations of the CVP (and the State Water Project) for the three-year life of the Accord and sent out all its signers, agencies and stakeholders alike, to build on that agreement in such diverse areas as project operations, state restoration funding, water rights implementation, and long-term Bay/Delta planning.

Unfortunately, the word processors developing the Bay/Delta Accord had hardly stopped whirring and the news media proclamations heralding the Accord had hardly been circulated before the CVP contractors launched their initial efforts to undo the CVPIA, one of the Accord's crucial building blocks. In the intervening seven months, this effort, along with the companion effort of some, but fortunately not all, of the same CVP contractors to "take over" the CVP from federal control, has done much to undermine the fragile consensus established in the Bay/Delta Accord.

Environmental organizations have probably spent at least twice the time and effort to defeat the CVP contractors' initiatives as on the consensus-oriented implementation of the Accord or CVP Restoration Fund. Likewise, interest among agricultural constituencies in consensus-oriented processes has faded

as well. The long-term Bay/Delta process, for example, was supposed to have published its initial recommendations by the end of 1995. It now will be lucky to have issued them by the end of 1996.

What the CVP contractors, now supported by the Chairman of this subcommittee, have done is to introduce a bill which seeks only to improve their position vis-a-vis others affected by the CVP, especially those who have environmental concerns. It doesn't even make any pretense about being a consensus bill or about addressing the interests of all Californians. As the attached critique demonstrates, the bill is all "take" and no "give." It may serve the narrow interests of a few CVP contractors, but it does not address the real future needs either of California's overall economy or of its environment.

Accordingly, the only signal we in the environmental community can take from this situation is that the contractors are spoiling for a fight. It is not a fight we sought, but it is one in which we necessarily must engage. Hopefully, progress in other more consensus-oriented arenas will not be an innocent casualty of the war that has now begun. Realistically, however, it is clear to me, as I have already stated, that the prospects for building positively on the consensus developed last December will continue to get bleaker the longer that we are forced to fight a rear-guard action here in Washington, D.C.

Mr. Chairman, thank you again for giving EDF and me personally the opportunity to testify, knowing that we would necessarily be compelled to oppose your bill. It is one of the great hallmarks of our political system that we allow, indeed encourage, debate on the important issues which engage us. Hopefully, the debate in which we are now engaged will lead us to a better CVP for all who depend on it for their livelihood and sustenance, be they farmers, city residents, or wild creatures.

Environmental Defense Fund *July 18, 1995*

An Initial Summary and Critique of Proposed Amendments to Title 34 of P.L. 102-575, the Central Valley Project Improvement Act of 1992

The following comments, provided roughly in bill order, are based upon EDF's initial review of H.R. 1906, the Central Valley Project Reform Act of 1995, as introduced on June 21, 1995. In sum, these amendments would:

- promote significant increases in the CVP's consumptive water use commitments at the direct expense of the fish and wildlife resources adversely impacted by CVP operations and development

- frustrate and impede the use of voluntary water transfers as a crucial water management tool for California's future

- perpetuate long-standing water use subsidies for CVP irrigation contractors and impose significant new costs on federal taxpayers

- eviscerate restoration goals for salmon, steelhead trout, and other anadromous fish, severely frustrate their attainment for state and federal refuges and wildlife habitat areas, and provide for federal pre-emption of state instream flow protection laws

- reduce, significantly and permanently, CVP Restoration Fund revenues, distort Restoration Fund expenditure priorities in favor of "brick and mortar" style fixes, and shift an ever-greater share of restoration costs to CVP power customers

- destroy the "reasonable balance" finally provided by the CVPIA among the Project's longstanding irrigation clients and other California interests, including power customers, urban water users, and long-neglected fish and wildlife resources

In addition, H.R. 1906 would undermine, directly and indirectly, the foundation upon which the December 15, 1994 *Principles for Agreement on Bay-Delta Standards* are based. For these reasons, and for the many additional reasons set forth below, EDF--as a signatory to the Bay/Delta Accord, and on behalf of its 250,000 members nationwide--opposes H.R. 1906.

NEW CONTRACTS Removes existing limitations on new contracts (above and beyond the many compromise exceptions that are already part of the CVPIA) subject only to completion of "appropriate environmental review" and a Secretarial determination that there is "sufficient water to meet existing contractual and legal obligations of the Secretary relative to the Central Valley Project."

Comments: If there's enough CVP water to meet new contractual commitments, why do existing environmental commitments cause so many apparent problems for current CVP contractors? Why shouldn't voluntary water transfers (as promoted by the CVPIA, but as frustrated by these amendments) be the principal means for meeting new water-use demands? Why should any additional CVP water be sold at a loss to federal taxpayers? Note also that the Secretary's "legal obligations" to public environmental resources will be substantially more difficult to meet should these proposed amendments become law.

RENEWALS Requires, upon request, the renewal of "any existing long term repayment or water service contracts" for successive periods of 25 years each, in perpetuity. Validates all pre-CVPIA renewals in their entirety, irrespective of financial, environmental, or other impacts. Eliminates incentive provisions for early contract renewals.

Comments: Abrogates a fundamental compromise of the CVPIA. Provides no assurance that the terms and conditions of all such perpetual renewals would not result (as has historically been the case) in huge taxpayer losses and sustained environmental damage. Elimination of early-renewal incentives perpetuates taxpayer subsidies and moves away, not towards, free-market principles. (According to data supplied by Smith-Barney, Inc. on behalf of the CVP Authority, more than 1,215,200 acre-feet of CVP contract deliveries will be made at rates which make no contribution to capital recovery through at least 2004.) Eliminates, directly or indirectly, a significant source of Restoration Fund receipts. (Losses could involve from $2-12 million per year in non-renewal surcharges after 1997 for the 1.33 MAF of CVP irrigation contracts scheduled to expire between 2004 and 2008, and/or up to $7 million in tiered-rate receipts should those same contracts be renewed prior thereto. Note: all estimates are based on October 1992 price levels.)

WATER TRANSFERS Imposes water district control and de-facto veto authority over all voluntary, user-initiated transfers of CVP water except for transfers, exchanges, or banking arrangements "which could have been conducted" prior to enactment of the CVPIA (emphasis added). Waives the collection of $25/AF surcharges for water transferred off-Project when rights of first refusal are exercised.

Comments: District veto authority over all voluntary, user-initiated transfers will discourage transfers of CVP water in response to changing State-wide needs, and will abrogate a fundamental compromise of the CVPIA. The exception for so-called "historic" transfers would apply without limitation as to financial, environmental, third-party, or other effects, even if such transfers had never historically occurred. The implied waiver of off-Project surcharges will result in a long-term loss of Restoration Fund income--e.g., $10,000,000 in any year in which rights of first refusal are exercised against only 400,000 AF/year of proposed off-Project transfers of CVP water.

WATER PRICING Eliminates tiered water rates, under which 80 percent of a contractor's CVP water is provided interest-free with only the last 10 percent provided at so-called "full cost" rates.

Comments: Described by the CVPWA and others as "punitive," this provision of the CVPIA--another fundamental compromise--actually locked-in historic interest subsidies for a full 80 percent of the

contractors' CVP supply. Removes an important voluntary water conservation incentive. Eliminates a significant long-term source of Restoration Fund income and/or supplemental water--up to $16 million annually, and/or up to 385,000 AF of conserved CVP water--depending on the pace of contract renewals as well as actual yearly demands for CVP water.

WATER CONSERVATION Imposes vague but potentially significant hurdles in the development of meaningful conservation criteria and guidelines for CVP water. Removes any remaining link between water conservation plans and the findings and recommendations of the final report of the Kesterson-inspired federal-state San Joaquin Valley Drainage Program. Affirms that contractors alone shall benefit "in a manner consistent with State law" from CVP water conserved pursuant to an approved conservation plan (including de-facto approvals after a 90-day period).

Comments: Entirely missing from these provisions is any recognition of the fact that the taxpaying public has an ongoing, substantive interest in the disposition and use of CVP water (including conserved water). Thus, if other aspects of the CVPIA are modified as proposed herein, more (as opposed to less) public scrutiny of and benefit from contractor-based water conservation programs would be warranted. The proposed deletion of all references to the San Joaquin Valley Drainage Program makes a mockery of the $80-plus million expended by taxpayers to address the problems at Kesterson Reservoir and to assess and document the benefits of water conservation and source reduction as priority and cost-effective strategies for solving agricultural drainage problems throughout the San Joaquin Valley.

FULFILLMENT OF PURPOSES Provides that the mere pursuit of CVPIA authorized programs and activities shall be deemed to fulfill the mitigation, protection, restoration, and enhancement provisions and purposes of the CVPIA.

Comments: This would remove any requirement for meaningful or substantive accomplishment as a measure of fulfilling the CVP's fish and wildlife purposes. (Does the Secretary's "pursuit" of these programs since October 1992 mean that, if H.R. 1906 is enacted, the job is already done?) It would also undermine the State's recently-adopted Bay-Delta Water Quality Control Plan, which requires, among other provisions, "prompt and efficient actions ... to implement" the CVPIA's fishery restoration objectives (emphasis added).

FISHERY RESTORATION Eliminates the Act's fishery restoration goals and program in favor of the State of California's goal of doubling salmon and steelhead production only. Gives statutory priority to CVPIA-authorized structural fixes. Eliminates a program under which the Secretary would assist the state in restoring the Bay/Delta striped bass fishery.

Comments: While the CVPIA's fishery restoration objectives are a clear embrace of existing State policy, the Act made those goals attainable (in the face of previous State inaction) as well as ecologically sound by providing the funding and the authority needed to achieve a sustainable doubling in the natural production of anadromous fish. As proposed herein, priority would be given to CVPIA-authorized structural fixes, irrespective of their scientific or biological merit. In addition, such a "narrowing" of purposes and objectives moves away from the goals of broad-based ecosystem restoration as is finally being pursued in earnest in the Bay/Delta Accord implementation process.

DEDICATED YIELD Re-defines the 800,000 acre-feet of CVP yield dedicated to fishery restoration purposes by (1) eliminating its primary purpose (i.e., the above doubling goal), (2) substituting "reserved water" for "dedicated yield," (3) removing all references to impacts on CVP delivery capability, (4)

requiring the diversion and re-use of such water for consumptive purposes "to the fullest extent possible," (5) authorizing reductions of up to 200,000 AF whenever CVP agricultural deliveries are reduced for any reason, (6) barring the use of such water to increase Delta outflows beyond those amounts required by other existing laws, and (7) imposing the crediting provisions of the Bay/Delta Accord as a statutory requirement of the CVPIA.

Comments: Taken together, the above provisions eviscerate the CVPIA's 800,000 acre feet of "dedicated yield" as a meaningful tool for pro-active fishery restoration. (Data provided by the CVP Authority indicate that contractor deliveries of CVP water are projected to increase by more than 1,459,400 AF annually between 1995 and 2030. Could this be why it is so important to "recapture" the environment's dedicated but minority share of CVP supplies?) Selective application of the "crediting" provisions of the Bay/Delta Accord also ignores the many other elements of that comprehensive Agreement that made such crediting appropriate for its three-year life. Also, if the CVP can be operated so that water can be "re-used" after contributing to fishery needs, why wouldn't it be operated that way in any case?

TRINITY RIVER Imposes new rulemaking requirements which must be satisfied prior to the implementation of any improved instream releases to the Trinity River. Requires that any such improvements must include unspecified variances "to take into account differing hydrologic and reservoir storage conditions."

Comments: These amendments would establish a new set of hurdles to realization of the fishery restoration objectives for the Trinity River, as well as fulfillment of the Secretary's Indian Trust obligations, as required by P.L. 98-541 more than 10 years ago.

SAN JOAQUIN RIVER Eliminates a program to investigate whether "reasonable, prudent, and feasible" options may exist for the restoration of fisheries in the San Joaquin River and throughout the San Joaquin River basin. Provides for federal preemption of any associated instream releases below Friant Dam, and imposes a revisionist history on the efforts and intentions of prior Congresses. Adds a long list of newly authorized projects of uncertain source or benefit.

Comments: These amendments override a carefully-crafted compromise involving virtually all parties of interest. They would also create a new priority for the use of Restoration Funds for projects of questionable merit or benefit, and would eliminate as a matter of federal law important flexibility under existing state law or as part of current efforts to achieve a long-term resolution of Bay/Delta problems.

FRIANT CONTRIBUTIONS Caps Friant Division surcharges provided in lieu of releases below Friant Dam at $6 million per year, or at $4.00/AF for Class 1 water and up to 50% of Class 2 water.

Comments: These amendments would further reduce the Bay/Delta contributions of Friant Division contractors (who export as much as 2,300,000 AF annually from the Bay/Delta system). In wet years, unit charges would drop to as little as $2.60/AF ($6m/2.3MAF). In dry years, total collections would drop to as little as $2.2 million (540kaf*$4/AF) in direct violation of the amendment itself. Further, by imposing such caps, these amendments eliminate any pretense that Friant in-lieu contributions will keep pace with inflation (unlike every other CVPIA-authorized surcharge). Depending on water year type and the year in question, these provisions will result in a loss of Restoration Fund income of $2-14 million/year.

REFUGE WATER Requires a re-investigation of water supply needs for state and federal refuges. Mandates within one year construction or acquisition of new conveyance and pumping capacity (including

in- and through-Delta facilities) as needed "to minimize possible adverse impacts upon [CVP] water contractors." Shifts all costs associated with the provision of baseline water supplies from CVP beneficiaries (as partial mitigation for CVP impacts) to federal taxpayers.

Comments: Allows for potentially-unlimited reductions in "firm" refuge deliveries through inappropriate application of agricultural best management practices, with any "conserved" water accruing to the benefit of other CVP contractors (compare to Water Conservation provisions, below.) Requires costly and unrealistic taxpayer-funded infrastructure capacity investments. Requires water supply reductions for any reason, and at any time, that CVP irrigation supplies are also reduced.

RESTORATION FUND Reduces Restoration Fund receipts by an estimated $5-30 million per year, increasing with time (see the above comments on contract renewals, water transfers, water pricing, and Friant contributions). Prohibits collection of Restoration Fund surcharges for the storage or conveyance of non-project water (e.g., "surplus" flood flows or Warren Act water). Eliminates assured Restoration Fund surcharge income in FY98 and beyond. Retains antiquated "ability to pay" limitations on Restoration Fund collections while removing all consideration of benefits provided through CVPIA-authorized water marketing, assured renewals, etc.

Depletes available balances by requiring payments to be made to the State of California for its San Joaquin River Management Program activities. Eliminates the required apportionment of available funds into "habitat" (2/3) and "structural" (1/3) components. Adds a requirement that supplemental water may only be acquired "by purchase" even if other alternatives can be used to acquire water voluntarily.

Comments: Reduced collections impose new but hidden costs on CVP power customers, changes the balance of collections between various project components and functions, and may require budgetary offsets of $30 million/year or more. The exclusion of "surplus" or Warren Act water ignores the fact that the storage and conveyance of non-Project water can and often does result in the same environmental impacts as the storage and conveyance of Project water. Modified "ability to pay" provisions continue to raise serious questions in light of the contractors' concurrent efforts and apparent "ability to buy" the Project itself.

Required payments to the State raise serious concerns given the State's failure to meet its commitments to provide cost share funding for CVPIA-authorized projects and programs. Elimination of the Fund's apportionment provisions will remove any assurance that Restoration Fund balances will be available when and in the amounts needed for supplemental water acquisitions (a key feature of the CVPIA as enacted). Limiting supplemental acquisitions to purchased water will also eliminate acquisitions through other voluntary methods (e.g., incentive-based pricing programs) and as part of the public's rightful share of water "developed" through, e.g., the $80 million Shasta Temperature Control Device.

YIELD INCREASE Gives new priority to completion of a study to replace the CVP yield (or water) dedicated (or reserved) for fish and wildlife purposes by the CVPIA in order to satisfy, "without limitation," the Secretary's contractual obligations. Further burdens the CVP with a statutory requirement to provide an alternative water supply for the Stockton East and Central San Joaquin Water Districts "at no impact to other CVP contractors" and with 75 percent of costs to be borne by federal taxpayers.

Comments: The above yield-increase study is nearly complete, with a draft for public review already released. (Missing from these amendments is any commitment on the part of Project beneficiaries to pay for any such increase.) See also the above comments on "New Contracts."

TESTIMONY

BY

JEFF KERRY

VICE PRESIDENT

GRASSLAND WATER DISTRICT

AND

FIRST SENIOR VICE PRESIDENT

CALIFORNIA WATERFOWL ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON RESOURCES

SUBCOMMITTEE ON WATER AND POWER

ON

H.R. 1906

CENTRAL VALLEY PROJECT REFORM ACT OF 1995

Mr. Chairman and Members of the Water and Power Subcommittee, thank you for providing me with the opportunity to testify before you today on H.R. 1906, the Central Valley Project Reform Act of 1995. I am Jeff Kerry, the Vice President of the Grassland Water District, but I also serve as First Senior Vice President of the California Waterfowl Association. And, I am also a landowner in the Grassland Resource Conservation District. I am testifying today on behalf of the Grassland Water District, the California Waterfowl Association, the Tulare Basin Wetlands Association, the Oregon Waterfowl and Wetlands Association, and the Alaska Waterfowl Association. Accompanying me today are Dave Widell of the Grassland Water District and Bill Gaines of the California Waterfowl Association.

Broadly speaking, our organizations believe that we are speaking on behalf of all the wetland, waterfowl and sporting interests up and down the Pacific Flyway. Moreover, I would like to emphasize that we are testifying only with respect to the impact of H.R. 1906 on these interests and the sportsmen and women who support these interests. We do not presume to speak to the host of other issues that will be considered today and in the future.

Mr. Chairman, before talking specifically about H.R. 1906, I would like to take a few minutes to describe the Grassland Water District to you. The organizations on whose behalf I am testifying today believe that the Grassland Water District offers a unique perspective on the management of Central Valley water. We are not in any "camp." We share some of the concerns of the agricultural water contractors because, like them, Grassland Water District also is a water contractor. But we also share some of the concerns of environmental and fishery interests because, like them, we also need to preserve habitat.

As I previously stated, I serve as Vice President of the Grassland Water District, but I also am, like thousands of others, a landowner within the Grassland Ecological area -- California's largest remaining wetlands complex. I own and maintain 288 acres which is about the average size of a landholding within the Grasslands. In the aggregate, private land makes up over 70 percent of the total Grassland acreage. Grassland landowners, like me, are unique among all of the landowners receiving water through the Central Valley Project because we do not farm crops or livestock, we farm ducks. To do that, we need wetlands.

I know there is an ongoing debate in Congress about what constitutes a wetland, and we follow that debate very closely. But for our purposes in the Central Valley and the Pacific Flyway, we need not engage in technical debates about what is a wetland. Simply stated, in order to provide viable wetland habitat we need to manage these lands by applying water according to specific water management regimes. If sufficient land and water is not available in the Central Valley than the ducks will either die or return to their nesting areas in poor shape causing a direct and negative impact on nesting success. This

impact on Central Valley wetlands will impact waterfowl populations from Alaska to Mexico, and throughout the Pacific Flyway.

At one time, Mr. Chairman, the California Central Valley provided over four million acres of wetlands for migratory waterfowl. We are down to less than one-tenth of that today. The 350,000 acres of Central Valley wetlands that remain provide vital wintering and nesting habitat for sixty percent of our Pacific flyway waterfowl which in turn represents over twenty percent of the entire continental U.S. waterfowl population. Moreover, Mr. Chairman, the Grasslands represents over one-third of the remaining Central Valley wetlands. Today, due to substantial changes in California's natural hydrology almost all of the Central Valley wetlands and the Grasslands are "managed wetlands;" meaning that water must be applied artificially and intentionally to the land during specific times of the year to create marsh vegetation. Put another way, in any given year, the quantity and quality of Central Valley wetlands is almost entirely dependent upon the water supplies made available from the Central Valley Project for hands-on wetland management.

Mr. Chairman, I said in the beginning of my testimony that we are not a member of any "camp." We maintain that position not just here in a public hearing, but also in private meetings. At various times, I think that members of the various Central Valley water "camps" have been disappointed with us, and perhaps even a little angry. I hope that suggests that we are succeeding in maintaining our independence. I also said that we believe we can offer a unique perspective on Central Valley water management, and I would like to explain what I meant. Much of the debate over the allocation of Central Valley water is theoretical with each side seeking to outbid the other in predicting terrible consequences if various actions do not take place.

The waterfowl community wants to avoid making predictions; we prefer to stick with historical fact. As you know, most of the water applied to the Grasslands between the 1960's and 1985 was agricultural drain water contaminated by selenium, boron, silt and other pollutants which eventually lead to the Kesterson disaster. In the 1993-94 water year, however, the Grassland wetlands and refuges in the San Joaquin Valley received safe and adequate water supplies in the summer for the first time in twenty years as a result of CVPIA. The results were far more dramatic than anyone predicted. More than 26,000 acres were irrigated compared to an average irrigation of 4,000 acres over the previous seven years. These critical summer irrigations increased waterfowl food production by an estimated 300 percent. On the private landholdings within the Grasslands, 49.5 million pounds of waterfowl food - or 14.5 percent of the total annual food requirements for Central Valley waterfowl - was produced in the 1993-94 water year. That compares to only 8.5 percent of production in the 1992-93 water year. Most important, the number of birds visiting these lands increased from 38,535 to 115,000 over the same period.

Mr. Chairman, we believe that CVPIA water supplies are the primary reason for the Central Valley waterfowl and wetland resurgence. I would like to clarify why we think that is so. For a number of years, waterfowl migrating through the Central Valley have been forced to survive, if they survived at all, on unhealthy and unsafe water and poor quality habitat. The Pacific Flyway bird population fluctuates from year to year due to a variety of factors. Regardless of the waterfowl population, however, it has become increasingly difficult for the Central Valley to accommodate the migration. The 1993-94 deliveries changed the situation on the ground, as demonstrated by the fact that in the Grasslands alone, three times as many birds were able to utilize safe and healthy habitat as a direct result of CVPIA water supplies.

CVPIA provides about 3,000 additional acres of early fall habitat from August 1 to September 15. CVPIA is also providing firm water to an additional 4,500 acres of habitat in the GRCD that prior to CVPIA relied on operational spills and/or wells. Improved water level management on 20,000 acres also is provided by CVPIA. Historically, pond levels were four to six inches deeper than recent years. Under CVPIA, a more constant source of water is available to allow shallower water level management and better habitat for more species of wildlife, especially shorebirds and green-winged teal. An average of 20,000 more wintering shorebirds (a 25% increase) use post-CVPIA wetlands in the Grasslands than pre-CVPIA wetlands.

Spring and summer wetland irrigation increases plant biomass two to three times, increases plant diversity, and increases seed production for wintering waterbirds. From 1986 to 1992 between zero and 8,000 acres were irrigated for an average of about 4, 000 acres per year. Even though the full potential of CVPIA is yet to be realized, in 1993 26,000 acres were irrigated. Less water was available in 1994, yet 14,200 acres were irrigated. Based on these numbers of pre-and-post-CVPIA water for irrigation, four times more habitat has been enhanced (from 4,000 to 16,000 acres). This number will continue to increase over the next seven years to about 40,000 acres of enhanced wetland habitat.

Improved water supplies and the resulting increase in habitat quality and quantity appears to have reduced disease outbreaks. Avian cholera outbreaks in the winters of 1991 and 1992 followed two years of drought and poor habitat conditions in the Grasslands. Since implementation of CVPIA in the spring of 1993, irrigations to improve wetland habitat, and ideal flooding conditions, no significant avian cholera outbreaks have been noted in 1993, 1994, or 1995 in the GRCD.

Mr. Chairman, The habitat improvements in the Central Valley cannot be attributed to changes occurring elsewhere in the Pacific Flyway. For example, breeding conditions in Canada, although improved during the last two years, followed 11 years of drought that severely decimated nesting conditions. Several years of good conditions are needed to bring waterfowl populations back to population objectives set by the North American Waterfowl Management Plan. If a farmer is able to increase the amount of

crop that he can plant in any given year, by the end of his season, his overall crop yield will have increased. The same holds true for wetlands. Like water supplies results in increased habitat acreage which results in increased bird use and increased wetland food production. Although these improvements will eventually lead to increased Pacific Flyway waterfowl populations, with only 3 years of implementation under our belt, our discussion of habitat improvements has nothing to do with overall populations, but rather, the fact that the existing population has access to much better and more suitable habitat and increased food supplies, which results in the birds returning to the breeding grounds in much better condition. Although, increased Pacific Flyway waterfowl numbers cannot, at the moment, be attributed to CVPIA water supplies; the use of reestablished natural habitat by Pacific Flyway waterfowl has increased sharply. This is largely due to waterfowls' preference for natural habitat with high food values instead of poor quality habitat substitutes, such as sewage treatment facilities and agriculture evaporation ponds that migratory birds have increasingly been forced to use as natural habitats have declined in significance.

Mr. Chairman and Members of the Subcommittee, I do not know how many of you are duck hunters. We are an unusual breed. We love to wake up at 4 am, get dressed in the dark, drive for an hour or two, and sit in the wet and the cold for five hours at a stretch. Probably, the majority of Americans would even think that your job as a Congressman is better than what we love to do. Most of us can only do it eight or ten times a year in the late fall and early winter, but we spend the rest of the year talking to each other about the next season and telling stories about the last season. Although we hunt for only a few days a year, our privately owned lands provide year round habitat for hundreds of other species of wildlife, and we invest hundreds of thousands of dollars in the management of this habitat.

Frankly, Mr. Chairman, in recent years, it has been getting harder and harder for us to hunt. Less water meant fewer ducks. With fewer ducks, bag limits have to be reduced. When bag limits are reduced fewer people are interested in hunting. This is a disturbing trend. Duck hunters are the original conservationists. We have imposed "taxes" upon ourselves in the form of surcharges on sporting equipment through the Pittman Robertson Act, and through state and federal duck stamp legislation - all of which generate critical funding for wetland restoration. As interest in duck hunting is reduced, so are these wetland funding streams.

The Central Valley Project Improvement Act has been a significant and substantial benefit to waterfowl and to sporting interests in the State of California. We do not want to see the refuge provisions of the Act weakened, because we know they work. We have approached H.R. 1906 with what we believe is a narrow but critical set of principles which we have applied to the refuge and waterfowl provisions of the bill:

- First, administrative remedies should be exhausted prior to consideration of legislative changes to refuge and waterfowl provisions of existing law.

- Second, legislative changes to refuge and waterfowl provisions must be the product of a consensus among all refuge stakeholders in the Central Valley.

- Third, management of watershed and refuges must not be weakened and, in some cases, must by improved.

- Fourth, secure funding for habitat and refuge restoration enhancement and acquisition must be maintained and improved.

We have reviewed H.R. 1906 through the prism of these principles and, in our opinion, several changes are needed to the bill as introduced to avoid particular hardships for habitat, refuges, and the private wetland landowner. We also want to point out that between the early drafts of H.R. 1906 which we were given the opportunity to review and the final bill, significant improvements were made in the interests of habitat and refuges. In particular, early drafts would have eliminated the guaranteed floor of delivering at least seventy-five percent of contracted water. The waterfowl community considered this provision to be a substantial step backward. To their credit, the proponents of H.R. 1906 eliminated this provision.

Despite these improvements from earlier drafts of H.R. 1906, the waterfowl community believes that further changes are necessary. Today, I would like to discuss a few such improvements in detail, Mr. Chairman. H.R. 1906 requires the Secretary to reduce water deliveries to Central Valley refuges and wildlife habitat areas by up to twenty-five percent whenever reductions are imposed on agricultural water service contractors. Unlike other provisions of H.R. 1906 which provide the Secretary with more management discretion, this provision provides him or her with less. The potential impact of a mandatory reduction could be devastating not just for California wetland, waterfowl and sporting interests but for the entire Pacific Flyway because, in a very real sense, this provision would work to make a bad situation worse.

Mr. Chairman, the reduction of water envisioned in this provision would occur when water conditions in the Central Valley are very tight. The purpose of the provision is to require refuges to reduce water if the supply to the agricultural water service contractors is reduced. Mr. Chairman, the Grasslands are the neighbors of many water service contractors and some of our landowners are water service contractors themselves. We do not take lightly the impact of water reduction on our agricultural neighbors. However, the impact on refuges is, in most cases, far more serious than the impact on agriculture. With only five percent of California's wetlands remaining, every acre of Central Valley wetland must be intensely managed in an attempt to recreate the benefits

of a larger, historic wetland base. To an extent, agriculture can plan around a water reduction. We cannot. In drought years, when this temporary reduction comes into play the maintenance of these refuge acres is of utmost importance. The ducks will come from the northern breeding areas whether we have adequate water or not. If we do not have water than the ducks will either die or return to their nesting areas in poor shape, causing a decline in nesting success and leading to a decline in the migratory bird population. There are no planning alternatives.

Having said that, Mr. Chairman, we want to emphasize that we do not take the position that refuge water can never be reduced by twenty-five percent regardless of the circumstances. We are not insisting upon a guarantee; rather, we are saying that the Secretary should have the discretion to provide wetland water above the seventy-five percent threshold if biologically justified. If a situation arises in which the risks to society are so great that the Secretary determines that refuge water delivery must be reduced temporarily, we believe this action may be justified. We cannot accept, however, a mechanical mandate that deprives the Secretary of making a sound scientific judgment about Central Valley wetlands and refuges.

We also would propose another change to existing law and to H.R. 1906 which we think will improve water management in the Central Valley. Under H.R. 1906, water deliveries may be curtailed for any reason. Under current law, water deliveries may be curtailed for hydrological circumstances. However, current law does not define hydrological circumstances. We agree with the proponents of the legislation that the lack of a definition leaves too much discretion with the Secretary. Therefore, we believe that H.R. 1906 should be amended to include a definition of the hydrological circumstance for which water deliveries may be temporarily reduced. Such a definition should eliminate the possibility of a "regulatory drought" by tying water reduction for fish and wildlife to precipitation and runoff levels and, in the case of consecutive dry years, perhaps to carryover storage, as well.

The third area of deep concern to us involves the future administration of the Central Valley refuge program. H.R. 1906 provides that the Secretary will be "deemed" to have met his or her legal obligations under the Central Valley Project Improvement Act and the Central Valley Project Reform Act by "pursuing the programs and activities" of each Act. Mr. Chairman, we think this provision will do more to improve the habitat for Washington lawyers than for California ducks. We are not sure what pursuing a program means. And, we believe that "deeming" compliance substitutes intentions for actions, and efforts for results. We believe, as I know you do, in holding government employees accountable for their actions. In a similar vein, we would like to address the requirement of a new report on the accuracy of the "Dependable Water Supply." In particular, we believe that, should this report be revisited, it must be done in a manner which assures the credibility of the new report, and the scope of the report should be expanded somewhat to assure its comprehensiveness. Perhaps most important, we urge

you to put mechanisms in place to encourage implementation of the report's recommendations whether those recommendations encourage more or less water for refuges.

An additional area of concern relates to the need for all CVP water contractors to implement water conservation standards. As this section reads, this requirement would also impose these standards on private wetland landowners and refuges in the Central Valley. Although all water users should be using water wisely, there is no recognition within this section that the management of wetland habitat is very different from the management of agricultural crops. We believe the criteria for water conservation on wetlands and refuges must be dealt with separately, or confusion will likely result in implementation of H.R. 1906 that would impair important optimum management of Central Valley wetlands.

The bill also directs the Secretary of Interior to construct or acquire water conveyance facilities and capacity from non-Federal sources. The waterfowl community supports this provision, but we believe that refuge and wildlife restoration should be given a priority with respect to any additional water that can be delivered as a result of additional capacity. The lack of clean and, direct authority to utilize fully non-Federal sources deprives the Secretary and, more importantly, the waterfowl habitat and refuges of much needed flexibility in meeting statutory and conservation objectives.

The next area of H.R. 1906 which is of significant concern to us is the funding of the restoration fund. Secure funding for the delivery of this wetland water is absolutely essential to protecting refuges and wildlife. H.R. 1906 makes the funding of the restoration fund more tenuous in two ways. The bill eliminates the requirement that the funding necessary to deliver these wetland water supplies be reimbursable and the earmarking of sixty-seven percent of the fund for habitat restoration, improvement and acquisition. Our commitment is to secure funding, not to the principle of making fund payments reimbursable. Unfortunately, we are not aware of a satisfactory alternative. H.R. 1906 would make replenishment of the fund subject to the appropriations process. In an era of ever tightening Federal budgets, this approach does not provide a secure funding alternative opening the possibility of a lack of wetland water even in a year when adequate water is available. And, the source of funds for restoration and protection is further attenuated by the elimination of the earmarking requirement. This would open the fund up for purposes other than restoration and acquisition. The combination of these two changes is, in our judgment, very dangerous to wetland, waterfowl and sporting interests.

Mr. Chairman, earlier in my statement, I said that I did not know whether you or your colleagues were duck hunters. I must confess that I hope each of you is one. Out in California, we are pretty far away from Washington and most of the time we like it that way. But events take place here that have a very significant impact on our land and the wetlands and waterfowl we love. In thinking about this testimony and talking to friends,

we inevitably would end up saying to ourselves, "if any of the Congressmen and women are duck hunters, they will know how important it is to get water to the refuges and habitat." Frankly, we hope that we could get some or all of you out to the Grasslands while you are considering this legislation. I am confident that if you came out to see the land, and see the wildlife you would understand why the changes to the legislation that we seek are so important to us.

Thank you again for the honor of testifying, and I look forward to answering any questions that you might wish to ask.

Big year for salmon industry

N. Coast season set to open amid huge catches

By ROBERT DIGITALE
Staff Writer

Commercial salmon trollers are hauling in large numbers of salmon for the first time in six years off the California coast as the season moves north to Bodega Bay on Wednesday.

By June 15, commercial fishermen had landed an estimated 500,000 chinook salmon, the Department of Fish and Game reports. The average catch for an entire season, May 1 to Sept. 15, is 600,000 fish. Since 1991, the highest season's catch for the state was 294,000 chinooks.

Meanwhile, sports fishermen are having their third hot season. By June 15 they had caught an estimated 147,000 chinooks off California. The average catch for an entire season is about 135,000 salmon.

"It's so much better than what we've had," said Zeke Grader, director of the Pacific Coast Federation of Fishermen's Associations in Sausalito. "It indicates we're back on an upswing."

The news is good for North Coast fishermen who have been strug-

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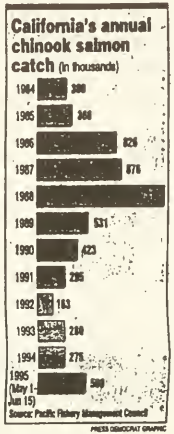

Salmon

Continued from Page A1

gling to survive in an industry tightly regulated to protect the salmon population and to meet the needs of Indian tribes that have historic claims to the fish along the Klamath River, north of Eureka.

Some of those controls have included a greatly reduced salmon season along the North Coast. While the season began May 1 south of San Francisco, fishing in Bodega Bay doesn't start until Wednesday.

Then for two weeks, the fishing grounds off Marin and Sonoma counties will be the sole spot in the continental United States to make a living catching salmon. Such exclusivity occurs in a country that once had millions of the silver-finned creatures swimming off both coasts.

"I guess it's a little bit of a source of pride for us in California that we still have some fisheries, but it doesn't say much for the rest of the nation," Grader said.

Fort Bragg, once the state's biggest salmon port, won't have its fishing grounds open until September. Only a meager season exists off Eureka and Crescent City.

A number of fishermen are expected in coverage on Bodega Bay for the opening Wednesday.

"I think everybody will come and try it out," said John Vogler, president of the Bodega Bay Fishermen's Marketing Association. He said the recreational fishermen have enjoyed good fishing in the area.

The salmon, most of which come from the Sacramento River, apparently rebounded because of ocean conditions that provided them with a good supply of food.

> "I think everybody will come and try it out."
>
> PRESIDENT JOHN VOGLER, BODEGA BAY FISHING ASSN.

The fish also benefited from heavier winter rains in the past few years, as well as extra efforts to protect an endangered species of salmon on the river, the winter-run chinook, Grader said.

Some of those efforts included adding water to rivers allowing more salmon to get upriver to spawn, releasing colder water from Shasta Dam into the upper Sacramento River to give eggs a better chance of survival, turning off pumps that draw Sacramento River water from the delta to send south, and lowering a dam across the Sacramento River at Red Bluff in order for the fish to spawn.

Grader said the fall-run chinook that salmon trollers are catching now have benefited from the environmental changes made to protect the winter-run species.

For the commercial trollers, the one dark spot this season is the price, $1.75 a pound, the lowest in at least 15 years. The reason is an abundance of farm fish, those raised in aquaculture operations around the world. As a result, consumers are benefiting from the large supplies. A representative for the California Seafood Council reports the farm salmon on sale for $3 to $5 a pound with wild salmon as low at $2.79.

The sports and commercial salmon fisheries provided $233 million a year to the West Coast economy in the late 1970s, federal economists estimate. That figure, calculated in 1994 dollars, compares with a meager $22 million last year — the worst on record. And nearly all that economic impact came to California.

For the future, observers said, the state's fishing industry has to establish an identity among consumers for its wild fish. Copper River Kings or Snake River Sockeye are two examples of fish that command higher prices. Early this season, the fishermen suffered for lack of such an identity for their chinooks, or troll kings.

"It seems clear that California troll kings were the Rodney Dangerfield of salmon in May," reports a new marketing study by the California Salmon Council. "They just got no respect from buyers."

Fishermen blame the problem partly on being unable to provide buyers with a steady supply of salmon in recent years due in the federal closure of so many fishing grounds. Moreover, in the past decade the farm fish industry has grown into a reliable source of fish. Salmon is no longer a seasonal product available only when the fishermen can catch it.

"It's like buying chicken," said Joe Calto of Calto Fisheries in Fort Bragg.

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Statement of the

PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS

to the

HOUSE SUBCOMMITTEE ON WATER & POWER

Regarding H.R. 1906

Washington, D.C.
20 July 1995

The Pacific Coast Federation of Fishermen's Associations (PCFFA) welcomes this opportunity to provide written testimony on H.R. 1906 by Mr. Doolittle and other members from California's Central Valley. While PCFFA believes testimony delivered by one of its officers or staff personally to the Subcommittee would have had greater value in the deliberations on H.R. 1906, PCFFA does, however, appreciate Congressman Riggs' submittal of this written material on PCFFA's behalf.

WHAT IS PCFFA?

PCFFA is a non-profit trade organization, incorporated in California. Its main office is located in Sausalito. PCFFA is an openly-run organization and its records are open to reasonable public review. Its membership includes 13 of the 15 marketing associations in California that represent commercial salmon fishermen, among others. PCFFA's 10 associate members also include salmon fishermen from California, including small boat operators and charter boat owners, as well as members from Oregon, Washington and Alaska. The marketing associations, which are the voting members on PCFFA's board, are democratically-run organizations which elect a representative and alternate to represent them on PCFFA's board. Those representatives annually elect the PCFFA officers and are responsible for the selection of executive staff. Although many outside of the fishing industry may not share PCFFA's views on one or more issues and may, indeed, wish to stifle those opinions they find provocative or offensive, PCFFA nevertheless represents the collective view of the majority of California's organized commercial salmon fleet.

Although PCFFA represents a number of different types of fishing men and women through its member organizations, it is its representation of the salmon fishery that has led to its involvement in efforts to protect habitat and flows critical to the survival of these fish, including the reform the Central Valley Project (CVP).

CALIFORNIA AND SALMON

At the outset, let us remind non-coastal members, that salmon are not simply a fish found in Alaska or in net pens in Norway or Chile. The salmon fishery followed California's history since statehood. The fishery initially was developed by early settlers to feed the gold miners, although it earlier played an important role in the subsistence and commerce of coastal Indians from central California north. The fishery is one of the state's earliest industries; in fact, the first salmon cannery on the west coast was located near Sacramento.

The importance of the salmon fishery to the state should not be surprising. The Sacramento-San Joaquin river system, after all, is second only to the Columbia-Snake system in the lower 48 states in historic salmon production. Even today, the Sacramento, San Joaquin and their tributaries -- the Central Valley river system -- accounts for approximately 75% of the state's commercial and recreational salmon harvest and an estimated 50% of Oregon's ocean catch. As late as 1988, salmon was California's most valuable fishery, accounting for millions of dollars to coastal economies and thousands of jobs. And even though, king (chinook) salmon, the mainstay of California and Oregon's salmon fishery, account for only a small part of overall world salmon production, troll-caught kings, which California has often led in the production of, have historically been the most valuable of all the species of salmon harvested.

Without a doubt the single largest factor contributing to the decline of California's salmon resource, and the jobs and economies it has supported, has been the construction and operation of the federal Central Valley Project. Shasta Dam on the Sacramento, Friant Dam on the San Joaquin, Folsom Dam on the American and the myriad of other federal dams on the tributaries have eliminated thousands of miles of spawning and nursery habitat. The California Advisory Committee on Salmon & Steelhead Trout reported that by the 1970's the 6,000 miles of salmon spawning habitat in the Central Valley had been reduced to less than 500 miles.

TAKINGS

Not only did Shasta, Friant, Folsom and the other dams eliminate thousands of miles of Central Valley fish habitat, their operations further worsened conditions in the rest of the system that was not inundated by reservoirs. Flow from Friant was eliminated, leaving a stretch of the San Joaquin for approximately 40 miles below the dam dry. This wiped out the San Joaquin spring-run salmon which averaged some 115,000 spawners annually and helped support the large Bay and Delta net fishery (accounting for a harvest of 300,000 to 500,000 fish). There was not an Endangered Species Act in the late 1940's to save the San Joaquin spring-run, they became extinct. Within 10 years of the completion of Friant Dam the 100-year old Bay-Delta net fishery was gone and so were the jobs and economies it supported in towns such as Pittsburg and Antioch. Had it not been for the efforts of State Senator George Miller, these fishermen would not even have been compensated for their gear.

On the Sacramento, plumbing of Shasta Dam to allow regulation of the temperature of the flows released from the dam were rejected as "too costly" and the "mitigation" facility -- the Battle Creek fish hatchery -- was foisted by the project on the U.S. Fish & Wildlife Service to operate out of the Service's budget (not from project revenues). Further, the project forced the hatchery to pay

the highest rates for electricity (a major cost of hatchery operations) charged by the Bureau, far higher than that paid by the project's agricultural contractors. Only recently has the rate charged the hatchery for electricity been reduced and efforts made to begin the badly needed modernization of the Coleman National Fish Hatchery; even with increased production, this facility will never fully mitigate the loss of salmon habitat in the Pitt, McCloud and Little Sacramento Rivers.

In the mid 1970's as a result of the drought and the increased sale of Bureau water, high water temperatures from Shasta's summer releases were causing a serious problem for the survival of winter and fall-run kings spawning in the stretch of river below the dam. The Bureau, with few exceptions, rejected requests for cold water releases from the base of the dam to protect the fish, saying the protection of fish was "not a project purpose". Ironically, had Shasta been plumbed, as recommended by biologists in the 1930's, for temperature control, it would have been possible to regulate the flow temperatures while still maintaining hydro-electric power generation. It was not until the listing of winter-run salmon under the Endangered Species Act that the Bureau began making cold water releases and serious consideration given to the design and funding of a retrofit device for temperature control.

Downriver, the CVP's Red Bluff Diversion Dam, was built and completed in 1964. This unit of the CVP could not be justified alone for agricultural water, so the Bureau threw in salmon enhancement to justify its construction. In operation, however, Red Bluff proved to be a salmon killer, not an enhancement facility as promised. All efforts at making the spawning channel work were given up on a few years ago. For years the Bureau refused to raise the gates at the dam to allow the safe downstream migration of winter and fall-run baby salmon, arguing the protection of fish was "not a project purpose". It was not until the listing of the winter-run that the gates were finally lifted to allow the downstream migration of baby winter-run. Only after the winter-run listing, have serious discussions begun on alternatives for the diversion of water at Red Bluff.

On the American River, the Nimbus hatchery, operated by the state under contract with the Bureau, has never successfully mitigated habitat losses and much of the actual rearing has to be done at the state facility at Oroville. Further, huge fluctuations in flow releases from Folsom, often leave the redds high and dry after spawning, killing the salmon eggs. Again, the Bureau refused to consider the fate of salmon below the dam, saying their protection was "not a project purpose".

The Trinity Unit of the CVP, completed in 1964, diverted flow from this north coast river into the CVP. The Trinity was regarded as the most important salmon producing tributary of the Klamath River. Although the Klamath-Trinity is not a large salmon

producing river, the ocean fishery off northern California and southern Oregon is regulated for the protection of Klamath and Trinity stocks and the river is important for sport fishing and the culture and subsistence of four different native American tribes. With up to 86% of the flow of this river being diverted, salmon and steelhead populations declined over 80%. In 1980, then-Interior Secretary Cecil Andrus did order flows increased in the Trinity to 340,000 acre-feet, but still far less than the 700,000 acre-feet recommended at the time by PCFFA. In fact, recent flow studies indicate that releases similar in size to those recommended by PCFFA will be needed to restore Trinity River salmon and steelhead runs.

Last, operations of the project's Delta pumps, in concert with the operation of the State Water Project's pumps, have had a devastating impact on the outmigration of baby salmon. Entrainment at the pumps and the loss in the Delta of fish due to change in flows has become such a large killer that most hatchery production is now trucked around the Delta for release into San Francisco Bay in order to improve survival. Unfortunately, there is no way to truck the natural production; the only way to increase their survival is to curtail Delta pumping during critical migration periods. Again, curtailment has only come as a result of the listing of the winter-run; the Bureau never felt compelled to take any measures to protect the fish in the Delta prior to that.

There has been considerable debate about takings legislation in this Congress, particularly in regards to the Endangered Species Act and the wetland provisions of the Clean Water Act. If this Congress really wants to examine takings, however, and who the <u>real</u> victims have been, it needs look no further than the salmon fishery and the jobs and economies this industry once supported. And, while many of growers south of the Delta complain of having their supplies reduced by 25, 50, even 75% in recent years because of the drought and curtailed Delta pumping, remember the fish have had their flow reduced by 100% on the San Joaquin, as much as 85% on the Trinity, and perhaps one-third to one-half overall through the Delta.

BALANCE AND REFORM

PCFFA and other fishing groups have been enthusiastic supporters of efforts to reform the Central Valley Project and restore some balance into a system that for fifty years favored out-of-stream diverters, much of it for low value or subsidized crops, over (or at the expense of) in-stream food production. The Central Valley Project Improvement Act, while not going as far as PCFFA believed necessary to restore the fishery economy, nevertheless contained many needed reforms to the west's largest and as yet unpaid-for reclamation project. The CVPIA includes a number of important provisions and reforms that are key to restoring California and southern Oregon's salmon fishery; these

include:

Project Purpose. Making the protection of fish and wildlife a project purpose of the CVP, brought a needed a balance into the operation of the project. Prior to this (or at least the listing of the winter-run) fish were sacrificed for other project purposes. Under the CVPIA, the Bureau now must balance the needs of fish and wildlife with other project purposes.

Doubling Goal. The goal of doubling natural spawning anadromous fish populations of the Central Valley is a modest goal. The doubling goal dovetails with California's earlier adopted policy of doubling its salmon and steelhead populations. The CVPIA does not require a restoration of fish populations to pre-project levels, instead it establishes as base period well after the project was in operation to use for the doubling requirement. The wet years of 1983, 1984, 1985 and the spring of 1986 produced record levels of salmon production in 1986, 1987 and 1988, and this year's good harvest appears to be a result of the 1992-93 wet year. This gives us confidence that it is not only possible to double these populations but, perhaps, even triple them. The U.S. Fish & Wildlife Service has recently released a long list of possible actions that could be taken for the doubling and is now preparing, based on what is reasonable and prudent, the draft CVPIA doubling plan. It is clear to PCFFA, due to the California Department of Fish & Game's fiscal crisis and its lack of a director, federal leadership will be required to ensure the doubling goal is met. The attempt to turn the implementation of the doubling plan over to the state is nothing more than an effort to kill the doubling plan, pure and simple.

800,000 Acre-Feet. The set-aside of 800,000 acre-feet of water was much less than PCFFA felt was needed given the multi-million acre-feet diversions by the project taking place. This 800,000 acre-feet can, however, play an important role in the doubling goal, protecting endangered species and meeting Bay-Delta water quality standards, provided it is used wisely. Additional water that may be needed for the fish will have to be purchased from the project, provided any is available.

Restoration Fund. California's salmon fishermen have taxed themselves through their salmon stamp program to raise funds for salmon restoration (the commercial salmon stamp program has been the single largest source of salmon restoration dollars in the state over the past decade). But fishermen are not in a position to pay to repair all the damage done to salmon stocks by the project. The CVPIA's requirement that the beneficiaries of the project pay into a fund to help restore damage done by the CVP was a long-overdue reform.

San Joaquin River Study. PCFFA sought to have the San Joaquin included within all of the other provisions, including fish

doubling, of the CVPIA. However, the bill's authors, as a concession to Central Valley Congressional members, agreed instead on a study to determine what measures might be feasible for restoring all or part of the San Joaquin fish and wildlife. In what PCFFA views now as nothing more than treachery, those same members who asked for the study are now trying to defund it, to kill it. If these members do not want a study, then let's simply get on with restoring the San Joaquin. Our first recommendation, since there is no study, is that flows adequate to support fish life be made available for release from Friant Dam. There is, after all, no study to say this is not reasonable or prudent. Remember, fishermen will never forget the San Joaquin.

Protection of the Trinity. The protection of Trinity flows, requested by Mr. Riggs in 1992, was also an important element of the CVPIA. Certainly the return of fishing jobs to the north coast depends on the restoration of Klamath and Trinity stocks, as well as a change in the method or place of allocating those stocks (not necessarily in the allocation percentages). PCFFA supported the Riggs' provisions of 1992, as it will be supporting this year a reauthorization of a reformed Trinity River Basin Fish & Wildlife Restoration Act.

H.R. 1906

Make no mistake, the real reform of the Central Valley Project occurred in 1992 when President Bush signed the CVPIA. PCFFA's review of H.R. 1906, as currently drafted, is that it is 49 pages of text repealing the CVPIA. Euphemistically called reform, the bill is nothing more than a return to the old business-as-usual days of CVP pork barrel operations. PCFFA does not dispute the fact that most pieces of major legislation are followed by subsequent "clean-up" measures to clarify meanings or address glitches. Indeed, PCFFA is currently working a crab limited entry clean-up bill through the California Legislature presently to address needed changes to its legislation of last year. And, given the fact that many of the CVP contractors choose to fight the passage of the CVPIA, rather than contribute to its drafting, it is not surprising they may now have some problems.

The question is, is legislation needed now? First, what are the real problems CVP contractors are having with the CVPIA? Keep in mind, the 800,000 acre-feet has yet to be used and the reductions in deliveries have had nothing to do with the CVPIA. Nor have all the planned uses for the restoration fund been finalized. Where's the beef?

Second, to the extent legitimate problems may exist, are they amenable to administrative remedies? Do we really need new statutory language to address problems, many minor in nature, that can be handled administratively?

Third, PCFFA and many of the other supporters of the CVPIA have always been willing to sit down and address problems contractors and would be contractors have with the CVPIA. To date, however, all we have heard is people wanting legislation, wanting to repeal the CVPIA, but unwilling to elaborate, or perhaps fearful of elaborating, their problems. The Act is barely two years old and many of its provisions are only now starting to be implemented, no thanks to many of the contractors who have thrown up legal hurdles every step along the way to implementing the CVPIA.

CONCLUSION

PCFFA does not see the reason for any legislation at this time affecting the CVPIA, and certainly not H.R. 1906, as currently drafted, which repeals the CVPIA. The 104th Congress is to be congratulated for its goal of balancing the federal budget by 2002. To do that, many Americans will be asked to sacrifice including the young and the elderly. Leaders of this Congress have talked of the need to end pork. The 102nd Congress worked to put an end to one the nation's largest pork barrel projects -- the Central Valley Project -- by reforming its operations. It would indeed be ironic that now the 104th Congress would pass a bill such as H.R. 1906 turning the clock back, returning to pork barrel projects. PCFFA respectfully urges H.R. 1906 be withdrawn.

Thank you for this opportunity to present this written testimony. PCFFA will be pleased to respond in writing to any questions of subcommittee members or staff.

United States House of Representatives
Committee on Resources
Subcommittee on Water and Power Resources
The Honorable John Doolittle, Chairman

Statement of Richard M. Moss, Manager
Friant Water Users Authority
July 20, 1995
Washington, D.C.

Good morning Mr. Chairman and Members of the Committee. My name is Richard M. Moss. I am the General Manager of the Friant Water Users Authority. The Friant Water Users Authority is a Joint Powers Authority comprised of 25 member irrigation and water districts along the east side of the San Joaquin Valley, ranging from Chowchilla Water District on the north, in Madera County, to Arvin-Edison Water Storage District on the south, in Kern County. Despite their diversity, these districts share a very important feature—they all receive water from the Friant Division of the Central Valley Project ("CVP").

The Friant Division is one of the original parts of the CVP as conceived back in the 1920's and 1930's by the State of California and subsequently developed by the federal government under the Reclamation Program. Friant Division facilities include Friant Dam and Millerton Lake on the San Joaquin River northeast of Fresno; the Madera Canal, which runs for 35 miles to the north, serving the Madera Irrigation District and the Chowchilla Water District, and the Friant-Kern Canal, which runs for 152 miles to the south, delivering water to 26 different irrigation districts, water districts and cities.

Friant Division water supplies make up a large part of the surface water available to the counties of Fresno, Tulare, Kern and Madera. These, respectively, are the Number 1, Number 2, Number 3 and Number 7 producing counties in the nation in terms of agricultural product. The agricultural output from these four counties will exceed that produced in most countries.

The area is comprised of principally small family farms numbering in excess of 10,000 units, planted to permanent plantings of high value crops.

This truly is a region that is unique in its combination of soils, water, climate and talented people. Because of its unique attributes, this area must be preserved and protected. There has been clearly a federal role in the development of the region and there will continue to be a federal role in assuring of the long-term productivity of the region. Much of what I will describe to you here today, especially in terms of the suggested changes to the San Joaquin River provisions of the Central Valley Project Improvement Act ("CVPIA"), goes to the notion of preserving and protecting this unique region.

The CVPIA went far beyond the idea of addressing environmental concerns related to the construction and development of the CVP. Unfortunately, many aspects of the CVPIA created unnecessary uncertainty and prescribed actions which could only be classified as punitive in nature. Many of these so called "improvements" have already proven themselves to be unfair, while generating little, if any, environmental benefit.

What you have developed and subsequently introduced, Mr. Chairman, in the form of the Central Valley Project Reform Act ("CVPRA"), will in many cases strengthen the CVPIA by clarifying the intent of Congress. It will remove those provisions that provide no environmental benefit, yet add to the uncertainty of water management in California. It will fix many of the problems that we have encountered to date in implementation of the CVPIA. You, the members of your committee and the many others who have worked very hard in developing the CVPRA should be congratulated on your effort. Successful passage of this legislation will clearly add to the environmental value of the CVPIA by making an unworkable law workable, while solidifying the baseline on which future changes to water management in California can be based.

If there is a theme to be found in my testimony today, it will be the CVPRA will not be "gutting" the CVPIA as some would characterize it, but is in fact a necessary correction to the CVPIA so as to make it of much greater value to California and the nation, moving the CVP into a position of greater environmental protection, while at the same time assuring that we have a reliable project.

Let me specifically address a couple of the provisions of the CVPRA and give you my analysis of the value of these provisions.

San Joaquin River and Friant Division Provisions

Section 6(b)(7) of the CVPRA calls for a rewrite of the part of the CVPIA wherein the federal study of the San Joaquin River, known as the San Joaquin River Comprehensive Plan, is replaced with direction to assist the State of California and appropriate local agencies in implementing a number of specific improvements.

Much of this section of the CVPRA deals with the implementation of the results of the state mandated San Joaquin River Management Program ("SJRMP"), a five-year consensus-based effort culminating in a report back to the State Legislature, which was finalized earlier this month. Many of the specific measures which would be implemented on the San Joaquin River under the CVPRA are to enhance the viability of the existing salmon fishery on the San Joaquin River and were pulled from the SJRMP report. The U.S. Fish and Wildlife Service and the Bureau of Reclamation were involved in the development of the San Joaquin River Management Program and in the final report. Clearly, the suggestion of the CVPRA to move to immediately begin to implement programs developed over an existing five-year study will have far greater environmental value than to have the federal government independently

trying to generate its own analysis of what needs to be done on the San Joaquin River. We need action—not more study.

The consensus that has been building behind abandoning any effort to re-establish the remnant salmon fishery that existed on the San Joaquin River before the construction of Friant Dam back in the 1940's has been overwhelming. Virtually everyone who has taken a serious look at the availability of the limited resources and the tremendous benefits of the current use of the waters of the San Joaquin River within the Friant Division has reconfirmed the original analysis by Congress when it authorized the Friant Division—there is simply not enough water to have both a viable salmon fishery below Friant Dam and to provide the water necessary to take advantage of the tremendous agricultural potential which exists within the lands of the Friant Division.

The CVPRA will reconfirm that it is of national interest to insure that water will continue to flow to the Friant Division service area by prohibiting releases from Friant Dam directly into the San Joaquin River. Let me clarify, however, that Friant Division water users are not absolved, by virtue of this language, from fully participating in all other aspects of state or federal law which would apply to any other water user in the State of California. In fact, you have gone to great lengths in addressing this concern in the language of the CVPRA. Friant water users have always been willing to do their "fair share" of environmental restoration and improvements—just not at the extraordinary expense of having to re-establish flows below Friant Dam.

Further, this legislation resolves a difficult problem that was facing the Administration in implementation of the San Joaquin River provisions of the CVPIA. Not long after the San Joaquin River Comprehensive Plan Study was begun by the federal government, it became obvious that the principal emphasis of the study to evaluate the re-establishment of the salmon fishery from Friant Dam to the Delta was not "doable". Everyone, including Secretary of Interior Babbitt, agreed that even studying the re-establishment of the salmon fishery was a waste of time. Yet Congress had dictated by virtue of the CVPIA that a study be done. The only way to resolve this problem is to have the CVPIA re-visited by Congress with the limitations that are now proposed as part of the CVPRA.

There clearly is a need for a federal presence in resolving the issues of the San Joaquin River. The need for the federal government to conduct its own study, however, has been obviated by the completion of the San Joaquin River Management Program. The federal government , enabled with the money and direction to begin immediately implementing the improvements prescribed in the CVPRA for San Joaquin River, will accelerate real environmental improvement.

The CVPRA would also propose to limit the "in lieu of water" contribution of money from Friant water users, the so called Friant Surcharge. This proposed limitation is clearly a result of your improved understanding of how the Friant Division of the CVP relies upon conjunctive use of groundwater as a major water management tool for the region. The

immediate new costs added by the CVPIA to Friant Division water supplies amounted to something on the order of $15 per acre foot: the $6 Restoration Fund charge applied to all CVP water sold, the $4 Friant surcharge, and the approximately $5 to $7 increase associated with dividing fixed operation and maintenance costs by a smaller water supply base as a result of dedicating CVP supplies to the new (non-paying) CVP purposes of fish and wildlife. The increases in cost are adversely affecting groundwater management decisions in the Friant Division by putting the cost of surface water in excess of that typically encountered in pumping groundwater. In districts that operate groundwater conjunctive use programs, the cost of obtaining water for recharge purposes can only be passed on to water users by way of land assessments—property taxes—so that water users continue to take surface water rather than turn to overdrafted groundwater supplies for purely economic reasons. Water tolls are thus limited to whatever the cost is to pump groundwater. In some cases, as a result of the CVPIA, the districts are now assessing their landowners at rates in excess of what the counties require for property taxes on improved land for all of their services. Needless to say, but there is "hell to pay" for many of these district boards of directors from landowners who do not understand that these increases in cost are beyond the control of the district.

By limiting the Restoration Fund contribution for the "in lieu of water" surcharge for the Friant Division to $6 million per year and not applying the surcharge to the Friant supply which is most typically used for groundwater recharge, you will be helping to stabilize the water price to these conjunctive use districts and assure that decisions are based upon what is good for the region on a long-term water management basis, as compared to the current situation of decisions being made for short-term economic advantage.

Contract Renewal

One of the most potentially devastating provisions of the CVPIA that would garner little, if any, environmental benefit is the provision regarding the renewal of existing long-term water service contracts. Not only did the CVPIA prescribe an interim renewal process which, by virtue of its implementation to date, is clearly unreasonable, but it also injected the notion that the Secretary of the Interior had some new level of discretion as to whether or not he or she would renew these contracts in the future. The changes proposed by the CVPRA would remedy this problem by insuring that the contracts for water service within the CVP are handled in a manner consistent with contracts throughout the Reclamation West, namely that the Secretary must renew such contracts upon the request of the contractor. The proposed changes in the CVPRA will also assure that there will be a water supply on an ongoing basis. It will re-establish that level of certainty which is needed to provide community growth and economic viability to a region. Providing a right to renewal does not guaranty that future terms and conditions of renewal, including price, will remain the same, nor will it provide some form of federal right to waste water. It does, however, provide an improved understanding of what these water contracts mean.

The proposed changes will re-establish the baseline, the foundation, from which the CVP water users can effect changes in water management in their districts and outside of their districts. One of the problems that was not very well understood at the time of passage of the CVPIA was that to the extent there was uncertainty injected into the basic understanding of what these water service contracts meant, then that uncertainty would necessarily translate itself into an unwillingness to participate in longer term commitments for such things as water marketing programs, system improvements and other new approaches to water management. A district is much more likely to be willing to enter into arrangements which will lead to resolving many of California's water management problems, if it knows the totality of their obligations, and if it can reasonably predict that there will be an adequate water supply to meet the needs of its constituents in the future. Injecting uncertainty into the renewal of these water service contracts virtually eliminated the potential for CVP contractors to enter into any form of long-term water marketing program or meaningful discussion of providing either water or money in resolution of California's water management crisis.

Again, much of what is being proposed as part of the CVPRA will return the CVP and the CVP contractors to a better understanding of what their baseline water supply and financial obligations will be, putting CVP water users in a much better position from which to continue meaningful discussions of resolving California's water problems, including the myriad of problems associated with the Sacramento-San Joaquin River Delta and San Francisco Bay.

Tiered Water Pricing

Currently, the CVPIA contains provisions which require water service contracts of longer than three years (i.e., long-term renewal contracts) to provide for tiered water pricing. Under the mandated pricing scheme, the first 80 percent of the "contract total" supply will be priced at the "applicable contract" rate, the next 10 percent of the "contract total" will be priced halfway between the "applicable contract" rate and the "full cost" rate, and all remaining water delivered will be priced at "full cost" rate. These prices are to be charged by the Bureau of Reclamation to the district.

Tiered pricing has been widely touted as an effective means of encouraging water conservation. However, a "one size fits all" approach to any water conservation measure ignores unique circumstances of different districts and imposes unnecessary burdens without any counterbalancing benefits. This is particularly true for tiered water pricing. "On the ground" experience clearly demonstrates that tiered pricing does not produce water conservation in all instances. In some cases, it is even counterproductive and contrary to sound water management, in that it can make overdrafted groundwater supplies less expensive than the more expensive "tiers" of surface water. Providing water users with an incentive to extract dwindling groundwater supplies in lieu of surface water is nonsensical. It has the potential of further exacerbating the problems described above currently being encountered in managing the increased cost of surface water supplies resulting from the CVPIA. The simple fact is that tiered water pricing does not result in significant water savings for farmers in the

Central Valley, especially in light of their water shortages and groundwater overdraft problems—it is just punitive.

Some are now complaining that the CVPRA's deletion of tiered pricing from the CVPIA will reduce contributions to the Restoration fund. Tiered pricing is either an effective conservation tool or it is not. If it is, it will reduce the amount of water sold at the higher priced tiers. Selling water at higher prices is what triggers additional contributions to the Restoration Fund under the CVPIA. Thus, if tiered pricing is as effective as its proponents argue, it will never enhance revenues. Instead, it would potentially reduce them. Therefore, to the extent proponents of tiered pricing argue that it generates additional revenue under the CVPIA, they have admitted that it is not an effective water conservation device in all instances. If tiered pricing is not an effective water conservation tool, there is no justification for it in the CVPIA, other than as a hidden means to raise revenue. It clearly should never have been relied upon as a source of revenue to the Restoration Fund and thus the elimination of this otherwise punitive provision of the CVPIA will have no real effect on the availability of revenues to the Restoration Fund.

Water Conservation

The CVPIA also requires the development and implementation of new water conservation criteria which are to promote "the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria have been developed and imposed on contractors via mandated conservation plans. Through those plans, the Bureau of Reclamation has insisted on the imposition of tiered pricing at the district to grower level, even though tiered pricing at the Bureau to district level is not to become effective until the long-term renewal of water service contracts (which is still years away). Under color of the CVPIA, the Bureau has also sought to impose a host of other measures on CVP districts in the name of conservation.

The current conservation guidelines developed by the Bureau, as well as the Bureau's implementation practices and policies, have been inflexible and time consuming, do not reflect the language of the CVPIA and go far beyond the law's legislative authorization. Without any legal basis, the Bureau has even conditioned water deliveries to districts on the Bureau's approval of those districts' conservation plans. Many districts have been subjected to numerous and redundant layers of sometimes conflicting review; some have waited more than 18 months after submission to receive approval of their conservation plans.

Moreover, some of the conservation requirements being imposed by the Bureau are punitive, prohibitively expensive, and even contrary to sound water management practices. In many instances, they do nothing to promote water conservations or provide environmental benefits. Some conservation requirements imposed actually cause environmental harm (such as increasing groundwater overdraft). In addition, the Bureau has forced districts to "prove the negative" by demonstrating that a particular conservation practice is inappropriate, rather than only requiring demonstrably effective and practical measures to be implemented. The goal

should be meaningful conservation, not needless hardship on districts and their landowners. The concern over these conservation criteria is resonating throughout the west, as nearly identical, but clearly less strident criteria are proposed in other Reclamation states by the Bureau of Reclamation. These other states will verify the inappropriateness of these criteria.

Water users in the Friant Division believe in water conservation, and have led the nation in pioneering water conservation techniques. We have learned, however, that the same conservation measures simply cannot be applied to all water users. Individual circumstances must be taken into account to develop a plan that best suits each district. A district should not be obligated to prove that a given measure does not produce meaningful conservation, and should not be required to implement a conservation measure until it is demonstrated to be useful and cost effective. Unreasonable burdens on districts or water users should be avoided, and proposed conservation measures should be subjected to cost/benefit analysis by the Bureau to demonstrate that they are economically feasible under the circumstances of each district. Conservation plans must also take into consideration each district's size, probable water supply, economic resources and other relevant factors when imposing uniform conservation measures. The proposals you have made by virtue of your introduction of the CVPRA would accomplish all of those goals while ensuring meaningful conservation efforts on the part of CVP water users.

Virtually all of the proposed revisions in the water conservation provisions of the CVPIA are in response to unreasonable Bureau implementation of the existing law. CVP districts have encountered extraordinary difficulties in processing water conservation plans, and have made little progress in correcting those problems despite repeated efforts to work with the Bureau to make implementation of the CVPIA water conservation provisions more balanced and reasonable. Generally, and quite appropriately, the CVPRA does not pursue legislative solutions to problems that can be addressed administratively. Where the Bureau has indicated a genuine willingness to proceed administratively, CVP districts stand ready to work with the Bureau to resolve CVPIA implementation problems. However, that is <u>not</u> the case in water conservation matters. The CVPRA is thus needed to facilitate meaningful water conservation efforts under the CVPIA.

<u>Summary</u>

In summary of my statement today, let me again note my appreciation for your willingness to once again address the issues of water management in the Central Valley Project of California.

The proposed changes in the CVPIA, as outlined in the CVPRA, represent a studied review of the CVPIA, its implementation to date, and its chances for a successful implementation in the future. The adjustments proposed by the CVPRA are needed and should be considered the minimum required in order to make the CVPIA a workable law. There is considerably more of the CVPIA that could have been, and maybe should have been, addressed by this legislation. It was obviously assumed by the authors of the CVPRA that many of the other

problems encountered in the implementation of the CVPIA will be able to be effectively addressed through administrative means rather than through legislation. We hope that this is in fact the case.

Certainly, these reforms will help to send the message to those responsible for implementing the CVPIA that Congress has been watching the implementation of the CVPIA and is willing to re-address those issues where it feels that the law is being unfairly implemented or misunderstood. It is important for the Congress to follow through in effecting these proposed minimal changes and to thus further ensure that reasonable implementation of the balance of the CVPIA will follow.

Thank you very much for the opportunity to address you here today. I would be happy to answer any questions you may have about my testimony or the impacts of the CVPIA upon the Friant Division of the Central Valley Project.

Hoopa Valley Tribal Council

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Dale Risling, Sr.
Chairman

HOOPA VALLEY TRIBE
Regular meetings on 1st & 3rd
Thursdays of each Month

TESTIMONY OF PLINY MC COVEY, SR., VICE-CHAIRMAN,
HOOPA VALLEY Tribe OF CALIFORNIA,
on H.R. 1906,
A Bill to Amend the Central Valley Project Improvement Act,
Before the
HOUSE OF REPRESENTATIVES
WATER AND POWER RESOURCES SUBCOMMITTEE

July 20, 1995

Mr. Chairman and Members of the Subcommittee, I am Pliny McCovey, Sr., Vice-Chairman of the Hoopa Valley Tribe. I am testifying today on behalf of the Hoopa Valley Tribe and the Klamath River Inter-Tribal Fish and Water Commission. The Commission was formed on January 6, 1995, by the Hoopa Valley, Yurok, Karuk and Klamath Tribes to preserve the natural resources of the Klamath-Trinity River Basin eco-system for the spiritual and physical well-being of our nearly 10,000 enrolled members.

1. Introduction

My testimony is divided into two parts. The first addresses H.R. 1906's policy implications and impacts on the fishery resources of the Trinity River and the Tribes' property rights relative to those resources. The second part discusses technical issues raised by the amendments. My oral testimony addresses the former, and I request that my printed testimony, which includes discussion of the technical issues, be included in the Record of this hearing.

We strongly oppose H.R. 1906 because of the adverse effects it would have on fish and wildlife populations throughout California. We particularly oppose section 6(b)(6) of H.R. 1906 because that provision would use delay and duplicative, bureaucratic procedures to politicize and effectively repeal the Trinity River provision of the Central Valley Project Improvement Act, section 3406(b)(23).

2. Background

The Trinity River is the only source of Central Valley Project (CVP) water that originates outside the Central Valley watershed. In its natural state, the Trinity River is a tributary of the Klamath River; its waters rise in the Coast Range and flow through the Hoopa Valley and Yurok Reservations before discharging into the Pacific Ocean. The average annual yield of the Trinity River is approximately 1.2 million acre feet (A.F.) of water. Since time immemorial, our Tribal cultures, economies, religions and communities have been integrally related to the once-abundant waters and fisheries of the Klamath-Trinity Basin. Our existing reservations were established in recognition of our reliance on and rights to those resources.

In modern times the Courts, the Congress, and both Republican and Democratic Administrations have recognized Indian reserved fishing rights in the Trinity River fishery. When Congress authorized the Trinity Division of the Central Valley Project in 1955 (69 Stat. 719), it required that in-stream flows be maintained for the "preservation and propagation of fish and wildlife" in the Trinity River. Id. § 2. Nonetheless, the Trinity Division eliminated spawning habitat in 109 river miles of the Trinity Basin and resulted in the diversion to the Central Valley of up to 90 percent of the average annual discharge of the Trinity River at Lewiston Dam impounded by the Trinity Division.

Despite Congress' clear intent to the contrary, the rights and needs of the Indian and non-Indian citizens of the Trinity River basin to fish, wildlife, and water resources were completely subordinated by the Bureau of Reclamation to the demands of the CVP. The once abundant salmon fishery to which the Tribes in the basin own reserved fishing rights and which was a mainstay of the Pacific Coast commercial fishing industry was nearly destroyed. The Trinity River is now incapable of supplying the ceremonial and subsistence needs of the Tribes, let alone supporting Tribal commercial fisheries, which the Tribes have not had in five years.

Each Tribe in the Commission has made a commitment to fishery restoration through the establishment of Tribal fishery agencies that conduct research, manage Tribal fisheries and participate in intergovernmental management programs with State and Federal agencies. For our part the Hoopa Valley Tribe has established a timber harvest management plan that is heavily oriented to watershed protection by the establishment of conservative stream side protection zones. In doing so the Tribe will forego future timber revenues with a present value of $50 million.

3. Legislative, Administrative and Judicial actions to restore the Trinity River

As the impacts of the Trinity Division's exportation of water to the Central Valley became clear, the Tribes and their non-Indian neighbors demanded enforcement, which was required by the Act of 1995 for the release of water to the Trinity River. In 1981, the Secretary of the Interior ordered a reduction in exports (annual in-stream flow releases were increased from 120,000 A.F. to 340,000 A.F.) to the Central Valley and began a long-term study to determine the water supply needed for the Trinity River fishery.

In 1984, Congress enacted Public Law 98-541 to provide for the restoration of the fish and wildlife resources damaged by the construction and operation of the Trinity Division. The 1984 Act directed the Secretary to develop a management plan to restore fish and wildlife populations in the basin to those levels that existed prior to the construction of the Trinity Division facilities.

The 1984 Act also established the Trinity River Task Force, which was composed of Federal, State, County and Tribal representatives. For the first time, Congress established a statutory role for Tribal and County officials from the Trinity Basin in the

recovery and management of the fish and wildlife in their own communities. In other words, the 1984 Act finally acknowledged those who, as far as the Central Valley Project was concerned, had become the forgotten Californians.

The severe drought in the late 1980s and the operating criteria for the Trinity Division that emphasized diversions of water to the CVP was devastating. Not only were fish populations further weakened, low flows in the Trinity River prevented the development of needed data for the long-term study. In 1991 Interior Secretary Manuel Lujan, Jr., (a former Member of this Committee) directed the Bureau of Reclamation to release annually a minimum of 340,000 acre feet of water from the Trinity Division for the benefit of the fishery. That decision was crucial to the restoration of the Trinity River fishery.

Anticipating efforts to rescind that decision, we requested our Representative, Congressman Frank Riggs, to reinforce it with an Act of Congress. He agreed and, after a difficult legislative battle, achieved bipartisan support for enactment of section 3406(b)(23) of the CVPIA which became known as the Riggs Amendment. The Riggs Amendment both confirmed Secretary Lujan's decision and established a legislative framework for reaching a final decision on water requirements for the Trinity River fishery and developing operating criteria and procedures for the Trinity Division.

The 1984 Restoration Act, Secretary Lujan's 1991 administrative decision, and the 1992 Riggs Amendment each required that decisions on Trinity River water supplies be based on the best available scientific data.

Having failed to prevent adoption of Secretary Lujan's administrative decision or the enactment of the Riggs Amendment, the Central Valley Project attacked the Riggs Amendment in court. That attack collapsed almost as soon as it began. A Federal district court in the Central Valley ruled that the Riggs Amendment had a solid foundation in the administrative record developed by Secretary Lujan, and that the Department of the Interior could immediately begin implementation of the Riggs Amendment without prior additional compliance with the National Environmental Policy Act. Westlands Water District, et al. v. United States, CV-F-93-5327-OWW, (E.D. Calif., April 28, 1994) (Memorandum Opinion and Order). The plaintiffs did not appeal.

Thus, the Riggs Amendment has been through a rigorous review by all three branches of government. In each case our opponents have done their best to defeat it, and each time they have failed. They have had their three strikes and they ought to be out.

Section 6(b)(6) of H.R. 1906 is the latest assault on the Riggs Amendment. H.R. 1906 would force the return to the political arena in Congress of detailed scientific data regarding fishery conservation and hydrology that the Department of the Interior has spent years in developing at Congress' direction. It is a flagrant attack on Indian reserved fishing

rights, and an apparent contradiction of the reform-minded values of the new leadership in the House of Representatives. The lobbyists for HR 1906 described their strategy to repeal the Riggs Amendment in a Memorandum that was released to the public:

> As you know, Rep. Riggs is urging California Members not to cosponsor a CVPIA bill that includes our Trinity River provision. He has sent around a "Dear Colleague" harshly critical of the proposal.
>
> Because of Riggs' influential position on the Appropriations Committee, we should make an effort to resolve his concerns now.
>
> . . . .
>
> One possible avenue to compromise would be to require the Secretary to issue new flow requirements as regulations are subject to APA. Making the Secretary take regulatory action would give us a role in the process without appearing to "inject politics" into it. It also would make the Secretary's actions on the Trinity subject to any regulatory reform measures Congress enacts, such as peer review and benefit cost analysis. (We might want to require those as part of the deal.) We also could consider requiring the Secretary's recommendations to take into account the economic and environmental effects on the Sacramento system.
>
> Accommodating Riggs by dropping or immediately amending the Trinity River provision would have several benefits. It would allow us to avoid making an enemy out of a powerful California Republican; deny a powerful ally to the enviros; demonstrate in a very concrete way that we are willing to be flexible and accommodate other interests; keep Riggs as a friend on appropriations issues now and in the future; and, avoid dissention within the Valley delegation over the CVPIA.

Memorandum from the Ferguson Company to Central Valley Project Water Users Association 2-3 (May 18, 1995).

The Ferguson Company memorandum was featured in the July 17, 1995, issue of U.S. News and World Report in an article pointing out that the seven cosponsors of H.R. 1906 "received $527,479 in political contributions from agricultural interests prior to the 1994 election."

H.R. 1906 is a thinly disguised attempt to bog down, politically and bureaucratically, a process that is a model of what the new majority in Congress has sworn to establish: a locally inspired, orderly process that uses the best available scientific information to reach a timely, constructive, and fair decision about retaining a mere fraction of the Trinity Basin's yield in the Trinity River while continuing to export the vast majority of it to the Central Valley. The Tribes and California's North Coast economies have given more than their fair share to the CVP and have received little in return. It is time to let well enough alone and let the people of the Trinity River Basin have a chance to rebuild their economy which is heavily dependant on the resources of this river. Moreover, the depressed North Coast economies have benefited from other non-consumptive uses of the river. For example, since implementation of the mandated 340,000 acre feet minimum Trinity River releases, recreational industries (rafting, boating) have increased. This is extremely important to local economies where, at times, unemployment exceeds 60%.

4. Additional comments

Section 6(a) of H.R. 1906 would add a provision to the CVPIA which States that "By pursuing the programs and activities authorized by this section [including 3406(b)(23)], the Secretary shall be deemed to have met the mitigation, protection, restoration and enhancement purpose established by this subsection." Section 3406(a)(5). "Pursuing" is undefined; but given its plain meaning in the sentence, any activity associated with implementation of the statutory program is declared to be an achievement of the purpose of the act. Under that provision, merely completing the flow study could be seen as "pursuing" the Trinity River program and therefore the program could be deemed to have been effective.

Section 6(b)(6) of H.R. 1906 amends the Riggs Amendment (3406(b)(23) of the CVPIA) in a way that is defective in substance, grammar, syntax. The amendment would rewrite the Riggs Amendment as six subparagraphs. In the amendment, the Federal trust responsibility to the Hoopa Valley Tribe's fishery resources appears to be applicable only to subparagraph (A), that pertains to releases of water between 1992 and 1996. However, the Riggs Amendment recognized that the trust responsibility extended to implementation of all aspects of the Riggs Amendment including future flow management decisions.

The sentence structure of the Riggs Amendment relates back to the introductory phrase of section 3406(b) which States: "The Secretary, in consultation with other State and Federal agencies, Indian Tribes, and affected interests, is further authorized and directed to: (1) . . . . " Thus, the proposed section 22 of H.R. 1906 should have been adapted to that antecedent sentence structure.

5. Summary Statement

In summary, on behalf of the Hoopa Valley Tribe and the Klamath River Inter-Tribal Fish and Water Commission, we adamantly oppose any Congressional efforts to circumvent the intent of the original Rigg's Trinity River Provision of the CVPIA. The future of the Tribes, and to a large extent the North Coast economies, rest upon successful restoration of the Trinity Basin. The Tribes are in agreement with our up-river neighbors (Trinity County) that needless delays to the Interior Secretary's 1996 Trinity River stream flow decision "is in essence, continuance of a 'taking' against the people". To proceed today with the structured Secretarial flow decision process as outlined for the Trinity River in the original Rigg's legislation, is to avoid tomorrow the specter now facing Congress in the San Joaquin Basin.

Mr. Chairman and Members of this Subcommittee, thank you for affording me this opportunity to provide verbal testimony.

TESTIMONY OF STUART L. SOMACH
BEFORE THE HOUSE COMMITTEE ON RESOURCES
REGARDING H.R. 1906
"THE CENTRAL VALLEY PROJECT REFORM ACT OF 1995"
WASHINGTON, D.C.

July 20, 1995

My name is Stuart L. Somach. I am an attorney with the Sacramento law firm of De Cuir & Somach and am here representing various Northern California water interests, including the Glenn-Colusa Irrigation District, for which I am General Counsel, water contractors on the Tehama-Colusa Canal and through the Northern California Water Association, numerous Sacramento River Water Rights Settlement Contractors.

The entities that I have listed (along with other water users who obtain all or a part of their water supply through the Central Valley Project ("CVP")) have had direct exposure to and have been directly affected by the Central Valley Project Improvement Act, 106-Stat. 4707 ("CVPIA"). As a consequence, the people I here represent have had and continue to have more than just a passing interest in the CVPIA and its implementation. They have been greatly interested in proposals that would clarify the CVPIA and better insure its reasonable and successful implementation.

We believe that H.R. 1906 constitutes one approach for dealing with problems associated with the CVPIA. It addresses significant problems associated with the CVPIA but still maintains the core environmental purposes and provisions of the CVPIA and, in fact, seeks to improve the chances that we will achieve the CVPIA's primary goals.

I know that this last statement may be hotly contested by some. Prior to reaching any conclusions with respect to H.R. 1906, we undertook an analysis of its provisions with one eye on insuring that needed environmental protections were not compromised and the other focused upon the need to clarify some of the more troublesome provisions of the CVPIA. The conclusion of that analysis is that each provision of the Bill is appropriate and that the Bill does not compromise the core environmental protections within the CVPIA.

I represent here individuals and entities that are all located within the Sacramento Valley, upstream of the Delta. Those who hold prior water rights in the Sacramento Valley settled the land around the time of Statehood and some have perfected prior water rights that date back to the 1800's. It is an area that is environmentally rich and in which, over the last decade or so, great strides have

been made toward developing environmental partnerships with various parties, including the United States Fish and Wildlife Service and conservation and environmental groups. These partnerships have allowed us to create extensive wildlife and waterfowl habitat within and adjacent to cultivated fields. As part of this process we have reduced the burning of rice straw which has minimized air quality conflicts. We have also reduced pesticide loading by over 95%, thereby improving the general quality of the rivers and streams in the Sacramento Valley. Additionally, in cooperation with various state and federal agencies, we are in the process of addressing problems associated with fish screens, and have contributed funds and expertise beyond that required by the CVPIA to study and improve fish passage at the Red Bluff Diversion Dam, in order to reduce or eliminate any adverse impact of our operations on fish populations. The net result of our efforts and successes, in this regard, is an attitude that does not oppose reasonable environmental protections but welcomes them.

With the foregoing in mind, I would like to turn my attention to the provisions of H.R. 1906 which most affect interests in the Sacramento Valley.

Initially, it was our understanding that the CVPIA was not intended to be punitive to existing CVP contractors. The CVPIA itself provides that among its purposes is the achievement of a reasonable balance among competing demands for use of CVP water including requirements of agricultural, municipal and industrial, power contractors and the requirements of fish and wildlife. Since enactment, this core purpose has been more or less ignored, with CVP contractors' needs being subordinated to fish and wildlife-driven operations. As we read H.R. 1906, it appears that one of its fundamental purposes is to clarify this point, both through a revised statement of purposes, and also through modifications in certain substantive provisions of the CVPIA. These modifications seek to address unreasonable imbalance in the CVPIA and its implementation.

H.R. 1906 would modify three definitions in the CVPIA. The first modification seeks to clarify the definition of "anadromous fish" so that the term is limited to stocks of Salmon. This clarification, in our view, is helpful. Focusing on habitat and flow-related demands of this species will have the benefit of improving the environment for other fish species without unreasonably encumbering the process through a requirement that all anadromous fish species need to be doubled. The current CVPIA approach creates the anomalous situation in which one must attempt to double both predator species such as Striped Bass and prey such as Salmon at the same time. This approach never made much common sense and correction of this problem should allow for greater success in reaching the real goals of the CVPIA in a reasonable fashion.

The other modifications to definitions focus on what water is subject to the provisions of the CVPIA and Bureau of Reclamation control. When the

CVPIA was drafted and debated we were assured that only CVP water would be implicated. In particular, we were concerned that the rights of those with state-created water rights which pre-date the water rights acquired by the CVP would not be affected by the legislation. In its implementation of the CVPIA the Bureau of Reclamation has indicated that it will treat Settlement Contracts on the Sacramento River the same as CVP water service and repayment contracts. Sacramento River Settlement Contracts, however, are not water service or repayment contracts. These Settlement Contracts were entered into with the United States as a means to address and resolve the protests of those with water rights on the Sacramento River to the granting of water rights to the Bureau of Reclamation for the CVP. These contracts were, in every sense of the word, a "settlement" of protests made by those with prior water rights on the Sacramento River. At no time was there any intent, nor can the contracts themselves be construed as simply converting those prior water rights to Reclamation contract rights. The base rights to water were never compromised as part of the settlements.

Sections 3(b) and (c) of H.R. 1906 address this issue by providing appropriate clarification that the terms "Central Valley Project water," "repayment contract" and "water service contract" do not include water right settlement contracts such as those on the Sacramento River and that the only water that Reclamation can exercise control over is water that has been acquired by it. Water rights acquired by others, including Sacramento River Settlement Contractors, are not for the United States to control.

As noted earlier, these provisions should not be viewed with concern by anybody. They merely confirm what was the intent, if not the letter, of the CVPIA.

In the Sacramento Valley, on the Tehama-Colusa Canal, there are CVP water contractors who have never been provided adequate water supplies. This unit of the CVP was authorized with Congress providing a priority in contracting. Before contracting was completed, however, then Interior Secretary Andrus declared a contracting moratorium associated with environmental concerns in the Bay and Delta. As a practical matter, this moratorium has never been lifted with the enactment of the CVPIA serving as a further obstacle to the United States providing to these contractors what had been promised.

The CVPIA also created additional practical problems which did not serve to advance any particular environmental purpose and which, in fact, have sapped the Bureau's limited resources to the extent that we believe progress under the more critical provisions of the CVPIA has been prejudiced. For example, it established a destabilizing interim contracting procedure which provides that interim contracts must be entered into for terms of three years, then two years, until certain illusory events occur in the future. H.R. 1906 provides that only one interim contract need be negotiated with regular long-

term contracting to proceed upon the completion of the Programmatic Environmental Impact Statement.

Section 4 of H.R. 1906 also seeks to address the uncertainty created by the CVPIA treatment of contract term. The CVPIA creates the possibility that existing contracts would themselves not be renewed after an initial 25-year term. Section 4 provides for the mandatory renewal of contracts for successive periods of 25 years, thus recreating the stability in water supplies that existed prior to the enactment of the CVPIA. This provides CVP contractors with comparable, although still less advantageous, water supply reliability as users in every other Reclamation project in the West and the State of California's Water Project. Moreover, Section 4 does this without, in any way, affecting the environmental purposes of the CVPIA. All contracts that would be executed under this section are to include (and already do, in the interim renewals) provisions that will allow the environmental purposes of the CVPIA to be enforced and implemented.

Proposed modification to CVPIA provisions on water transfers and water conservation are geared toward advancing these purposes. The provisions of H.R. 1906 that address these issues and repeal of the "one size fits all" tiered pricing were developed through experience and relate to how things really work as opposed to dealing with these issues on a purely theoretical basis.

Section 6 of H.R. 1906 seeks to add certainty to the environmental compliance aspects of the CVPIA and to coordinate the CVPIA environmental restoration goals with that of the State of California. Section 6(b)(3), in particular, provides needed clarification with respect to the commitment of 800,000 acre feet of CVP water to advance the purposes of the CVPIA and other provisions of law. It provides, however, the common sense limitation that once the water is used for environmental purposes it can be diverted to agricultural and municipal and industrial purposes. As things currently stand, there is a great deal of resistance to the idea that once the 800,000 acre feet of CVP water is utilized for environmental purposes it can, where appropriate, be reclaimed for other CVP needs. Congress never intended that CVP contractors receive credit for the 800,000 acre feet for the environment only if it hurt them.

My purpose here is to focus on the aspects of H.R. 1906 that are most crucial to Sacramento Valley interests. It is important to us that these crucial issues be addressed in a reasonable fashion. The fact that I have not addressed the rest of H.R. 1906 does not mean that we have not reviewed these provisions or that we do not, on balance, support them. They are, however, best described by others.

The CVPIA was developed in a "cut-and-paste" manner with various interested parties, particularly the environmental community, providing ideas and language that was adopted with little evaluation or question. In light of this,

it is not surprising that some provisions of the CVPIA are less than clear and, as a practical matter, do not work. It is also not surprising that in light of how the CVPIA was developed, the Bureau of Reclamation has not implemented the legislation in the most effective manner. The CVPIA clearly has major defects. We believe two options exist. The first is to ignore these defects out of some ill-defined fear that to modify the CVPIA at all is to destroy its environmental effectiveness. The second option is to fix what is defective so that the CVPIA can serve the purposes for which it was written. We do not think that there should be any question about which course is the most appropriate way to proceed. We must fix the defective aspects of the CVPIA so that it can serve as an effective vehicle to carry out its intended purposes. We believe that H.R. 1906 does this in an appropriate and reasonable manner.

TESTIMONY BY CHARLES D.N. BROWER
CHAIRMAN, NATIVE MIGRATORY BIRD WORKING GROUP
ON
POSSIBLE EFFECTS ON ALASKA NATIVES
BY
CENTRAL VALLEY PROJECT IMPROVEMENT ACT

The Honorable John Doolittle, Chairman House Subcommittee on Water & Power Resources, Members of the Committee, Ladies and Gentlemen. My name is Charles D.N. Brower, Chairman Native Migratory Bird Working Group (Native Working Group). The Native Working Group is a coalition of Alaska Native organizations that represent the interests of Alaska Natives who rely heavily on subsistence uses of migratory birds. We present this testimony after our careful and independent review of the California's Cenral Valley Project Improvement Act (CVPIA).

Mr. Chairman, I can speak with some degree of authority on the issues of subsistence hunting of migratory birds. My people have customarily and traditionally hunted and harvested migratory birds for sustenance even before Columbus got lost and accidentally found himself in North America. In Alaska, record show that the subsistence hunting and harvesting of migratory birds are very low compared to the sports take throughout the United States. For example, the subsistence take on geese is about 3% and the sports take is 97%. The subsistence take of ducks in less than 3% of the sports take. Mr. Chairman, the point I am making is, the customs and the traditions of Alaska Natives serve as the conservation measures for migratory birds because we do not take any more than we need for subsistence and, for the most part, we take them during spring time and leave them alone during the nesting season. We also do not shoot migratory birds for sport, period.

We, in Alaska, are blessed with millions of acres of prime habitat for migratory birds and Alaska is, for the most part, where they pro-create the species. While, the habitat conservation may not be much of a problem in Alaska, our major concern continue to be the question of whether the migratory birds, both from the pacific and central fiyways have the quality wintering habitat they need in the lower 48. The species of most concern to us include the Brants, the White-Fronts and Canadian Geese which make California their wintering habitat. We understand that the current wintering habitat, over the years, have been reduced to a level where there is now considerable concentration of migratory birds in small areas. What will happen if there is reduction in the wintering habitat of the Migratory Birds? How will the quality of wintering habitat be

affected by reduction of appropriations of water to wetlands?

Mr. Chairman, these are real concerns. We are hoping that you will do everything in your power to conserve the quantity and quality of wetlands in California to prevent any possible adverse impact on the migratory birds. We are at your mercy, but one thing is clear to us. We will continue to hunt and harvest migratory birds for subsistence in accordance with our customs and traditions. We trust that you will take our concerns into consideration in your deliberation on the proposed amendments to the CVPIA legislation.

TESTIMONY OF
DENNIS DICKMAN, GENERAL MANAGER OF THE CALAVERAS PUBLIC POWER AGENCY AND DOMINIC N. SALLUCE, AGENCY COORDINATOR OF THE TUOLUMNE PUBLIC POWER AGENCY

BEFORE THE
SUBCOMMITTEE ON WATER AND POWER RESOURCES,
HOUSE COMMITTEE ON RESOURCES

HONORABLE JOHN T. DOOLITTLE, CHAIRMAN

ON H.R. 1906,
TO AMEND THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT AND FOR OTHER PURPOSES

JULY 20, 1995

This testimony is jointly offered by Dennis Dickman, General Manager of the Calaveras Public Power Agency (CPPA), and Dominic N. Salluce, Agency Coordinator of the Tuolumne Public Power Agency (TPPA).

CPPA and TPPA are located in California and are "first preference" electrical power customers of the Federal Central Valley Project (CVP), and our interest in H.R. 1906 relates to that preference power entitlement. We are concerned that our preference power entitlement, which was intended by Congress as a quid pro quo for the physical and economic impacts of the New Melones Project of the CVP on Calaveras and Tuolumne Counties, will be adversely affected by CVP operational changes presumably implemented under authority of the provisions of the Central Valley Project Improvement Act of 1992 mandating certain environmental purposes and benefits.

The Flood Control Act of 1962 (Pub. L. 87-874) authorized development of the New Melones dam and power plant, and provided that first preference to power be given to public agencies located

within the counties affected by construction of the dam and reservoir, those being, Calaveras and Tuolumne Counties. In 1982, the CPPA and TPPA were formed to make beneficial use of this power entitlement. CPPA and TPPA are comprised of 57 local public agencies including cities and counties, school, water, public utility, sanitary, fire, and other special districts. A list of the 57 member agencies is attached hereto.

The U.S. Congress granted a first preference to power for Calaveras and Tuolumne Counties to mitigate, in part, the negative physical and economic impacts of the New Melones Project. These impacts include the loss of substantial private acreage and the consequent loss of resource production and taxes from these lands; a loss of local, Foothill and Mountain Counties, water and power production resources to outside interests; a reduction in Federal cost-sharing for recreational improvements at New Melones Reservoir; a loss in whitewater rafting opportunities; and increased local expenses to support emergency response services in the reservoir area such as sheriff, fire, ambulance, and search and rescue.

The Flood Control Act of 1962 provides:

> That contracts for the sale and delivery of additional energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences as expressed in the Federal reclamation laws except that a first preference, to the extent as needed and as

fixed by the Secretary of the Interior but not to exceed 25 per centum of such additional energy, shall be given under reclamation law, to preference customers in Tuolumne and Calaveras Counties, California.

The CPPA and TPPA annual power entitlement to 123,000,000 kwh and associated capacity is based upon historical Stanislaus River hydrology and production of an average annual energy generation from New Melones of 492,000,000 kwh. This entitlement should not be adversely affected by provisions of the CVPIA, by any subsequent USBR redeterminations of New Melones' firm yield, or by other possibilities such as a transfer of the CVP or WAPA from Federal ownership.

The CVPIA of 1992 requires that 800,000 af of CVP yield be utilized for environmental purposes -- approximately 200,000 af of which has been designated by USBR and USFWS to be drawn from New Melones -- which could potentially have the effect of reducing New Melones power production. We have never been able to get an explanation of what the effect of CVPIA-modified New Melones releases for downstream environmental enhancements has been on power production.

The Calaveras and Tuolumne County entitlement to an average annual generation of 123,000,000 kwh and associated capacity was a quid pro quo for the physical and economic impacts to these two Counties, and it is simply unfair to change the Government's obligation by subsequent enactments and administrative actions.

Furthermore, the Counties need the benefits of this economic source of power more than ever. The purchase of Central Valley Project power saves CPPA and TPPA public agency customers approximately $2.5 million per year in comparison to the area's private utility rates (which are 50% higher than the national average). This savings helps reduce the costs of providing essential public facilities and services. This savings is critical to local governmental units which are feeling a tremendous cost squeeze from Federal and state mandated programs. In California the problem is further exacerbated by a "tax shift" crises, whereby the State government has been stripping-off county and special district revenues to supplement its general fund revenues.

CPPA and TPPA would therefor greatly appreciate your Subcommittee's consideration of including in H.R. 1906 the attached legislative language to protect our preference power entitlement.

Thank you for the opportunity to testify on this issue of critical importance to the CPPA and TPPA.

CVPIA PREFERENCE CUSTOMER LEGISLATIVE LANGUAGE

Nothwithstanding the provisions of the CVPIA of 1992, or any amendments to that or any other law, the first preference entitlement of the Counties of Calaveras and Tuolumne, California to CVP power shall be 123,000,000 kwh of electrical energy and associated firm capacity.

Calaveras Public Power Agency
Member Agencies

Altaville/Melones Fire Protection District
Bret Harte Union High School District
Calaveras County Office of Education
Calaveras County Water District
Calaveras Public Utility District
Calaveras Unified School District
City of Angels
County of Calaveras
Ebbetts Pass Fire Protection District
Ebbetts Pass Veterans Memorial District
Jenny Lind Fire Protection District
Jenny Lind Veterans Memorial District
Mark Twain Hospital District
Mark Twain Union Elementary School District
Mokelumne Hill Fire Protection District
Mokelumne Hill Sanitary District
Murphys Fire Protection District
Murphys Sanitary District
San Andreas Fire Protection District
San Andreas Recreation and Parks District
San Andreas Sanitary District
39th District Agricultural Association
Union Public Utility District
Vallecito Union School District
Valley Springs Public Utility District
Valley Springs Sanitary District
West Point Fire Protection District

Tuolumne Public Power Agency
Member Agencies

County of Tuolumne
City of Sonora
Tuolumne Utilities District
Groveland Community Services District
T. C. Water District No. 1
Jamestown Sanitary District
Tuolumne Sanitary District
Mono Village Water District
Mother Lode Fairgrounds
Twain Harte Park & Recreation District
Columbia Fire District
Jamestown Fire District
Mi-Wuk Fire District
Twain Harte Fire District
Tuolumne Fire District
Columbia Community College
Superintendent of Schools
Sonora High School
Summerville High School
Bellview School
Chinese Camp School
Columbia School
Curtis Creek School
Groveland-Big Oak Flat School
Jamestown School
Sonora Elementary School
Sousbyville School
Summerville School
Twain Harte School
County Special Education

BF

BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT
825 5TH STREET
EUREKA, CALIFORNIA 95501-1172 PHONE (707) 445-7471

July 18, 1995

The Honorable John Doolittle, Chairman
Subcommittee of Energy and Water, Committee on
Natural Resources,
U. S. House of Representatives
Longworth House Office Building, Rm 1526
Washington, D.C. 20515

Transmitted via FAX and mail

Re: HR1906 (Doolittle)-Proposed Amendments to the Central Valley Project Improvement Act (P.L. 102-575).

Dear Congressman Doolittle,

We request this letter be entered into the subcommittee hearing record for HR 1906.

In 1992, Humboldt County supported passage of the Central Valley Project Improvement Act (CVPIA). The Board of Supervisors took this position because the Central Valley Project reforms contained in the legislation would have a direct beneficial effect on the county's sport, commercial and Indian salmon fisheries. As you should know, the welfare of our salmon fishermen is directly linked to the condition of salmon populations in the Sacramento River (historically, over 75% of the salmon caught by the Northcoast's sport and commercial ocean come from the Sacramento River) and Trinity River, both of which are key water sources of the CVP. The commercial and sport salmon fisheries are an important component of our county's economy.

Provisions of the CVPIA: require an equitable redistribution of CVP water, recognizing fishery resources are an equally important beneficial use of the water; establish a meaningful fishery (and wildlife) restoration

program; and subject agriculture water delivery contracts to a reasonable process of environmental review in order to insure contract renewals are consistent with fishery protection and restoration goals and objectives. Other CVPIA provisions establish minimum fishery maintenance flows in the Trinity River, which flows through our county, and a procedure for future upward adjustments if warranted by findings of the 1996 Flow Decision.

We are aware that you have introduced HR 1906, a bill which would amend the CVPIA in a multitude of very fundamental ways. An analysis of the bill reveals that the bill-which, by the way, we understand was authored by the Central Valley Project Water Association-would eliminate or neutralize what we consider to be the Act's most important elements. In regard to the Trinity River amendments, proposed changes would make establishment of essential Trinity River fishery maintenance flows more problematic by injecting an additional, redundant bureaucratic layer of review into the process and severely limit the ability of area of origin counties to successfully ajudicate the 1996 Flow Decision.

Other fishery damaging amendments proposed in HR 1906 would:

- Literally define out of existence the 800,000 acre feet of water dedicated to fisheries restoration (except for water required to meet new Bay-Delta standards).

- Eliminate the anadromous fisheries doubling program required by the CVPIA.

- Kill the San Joaquin River Comprehensive Plan required by the CVPIA. This plan would merely study options to partially or fully restore the now-dry upper San Joaquin River, just below Friant Dam. Some of these options would result in no reduction of water to Friant water users. The Act did not authorize any release of water to implement the Plan without explicit Congressional action. H.R. 1906 would also override state law and prevent the state from ever considering San Joaquin River restoration.

- Delete the requirement that 2/3 of the CVPIA restoration fund be used for habitat restoration such as purchasing water for the environment. The amendment would allow all of the fund to be used for facilities which primarily benefit CVP contractors, rather than the environment. Reducing the ability of the fund to purchase environmental water would

be particularly devastating given proposed amendments to the environmental water dedicated by other sections of the Act.

- State that merely by "pursuing" restoration actions, the Secretary shall be deemed to have satisfied the CVP's environmental obligations. The CVP would thus be required to meet contractors' needs and merely to pursue restoration, with no requirement to achieve actual results.

In our view, HR 1906 is nothing more than a cynical attempt by a greedy minority of CVP water users to intentionally sacrifice the equitable reforms of the CVPIA that require the protection and restoration of public trust salmon and steelhead fishery resources of the Trinity, Sacramento and San Joaquin Rivers in order to profit from regaining control of the CVP's water. We want to be perfectly clear: a consequence of this environmental mugging will be the perpetuation of the economic hardship visited upon our county by the devastating declines CVP affected fish stocks have experienced over the last three decades-this is a totally unacceptable price you expect our county to bear. As you can surmise, we are strongly opposed to passage of HR 1906 and will urge our congressional representatives to oppose it.

Sincerely,

STAN DIXON, Chair
Board of Supervisors

cc: Congressman Frank Riggs
Senator Diane Feinstein
Senator Barbara Boxer

July 18, 1995

By Fax (202) 225-5444

Chairman John T. Doolittle
House, Water and Power Resources Subcommittee
House Resources Committee
1337 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Doolittle:

Re: H.R. 1906 - CVPIA Reform Act of 1995

I am aware that hearings on HR 1906 are scheduled in Washington, D.C. on July 20, 1995. While I have not sought to participate at these hearings, I am hopeful that you will include this letter in the record, and that the Committee will consider the substance of our request when the bill is further considered in the legislative process.

I am writing on behalf of the Delta Wetlands Project, a unique water supply project being developed with private sector financing and expertise, rather than by government agencies using public funds. I have attached an overview of the project for your records. The project, once completed, will provide a unique blend of new water supply and conservation benefits, and be accomplished wholly by the private sector.

Our specific concern relates to Section 3408(c) of the Central Valley Project Improvement Act (P.L. 102-575). A small part of that subsection threatens harm to the private sector, appears to be unintentional, serves no valid purpose, and can easily be remedied by a brief amendment to the Act. Section 3408 (copy attached) provides general authority for the Secretary of the Interior to enter into contracts with a broad range of interests for the "exchange, impoundment, storage, carriage, and delivery of Central Valley Project and non-project water" for a number of purposes.

Interestingly, and for reasons which are not made clear either in the statutory language or in the legislative history for the provision, such transactions are limited only to private nonprofit organizations, to the apparent exclusion of private organizations for profit. Under this provision at least, the entire business sector is excluded from entering into contracts with the Secretary to supply services or facilities with respect to Central Valley Project and non-project water.

This incongruous provision in the CVPIA impairs or eliminates a significant market for private entrepreneurs dealing in water, in water facilities, or in services related to water, and substantially

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discourages private investment in water development. Such a result does not seem consistent with emerging policies seeking to lift unnecessary and unjustified restrictions on the private sector. Indeed, the restriction does not seem to be based on any identifiable purpose.

The problem can be resolved quite readily. An amendment which deletes the word "nonprofit" from subsection (c) would create no penalty to nonprofit interests which would remain able to contract with the Secretary, but would broaden the authorization to allow other interests in the private sector to contract, including those which operate for profit. When amendments to HR 1906 are taken up in the Subcommittee, I am hopeful that the Committee will consider removing this unnecessary limitation on contracting by the private sector.

I thank you very much for your consideration of this request.

Sincerely,

John L. Winther
President

JLW:kf
Enclosures

cc: Congressman Wally Herger - By Fax (202) 225-3245
no enclosures

bc: Mr. Guy Martin - Perkins Coie
Ms. Anne Schneider - Ellison & Schneider
no enclosures

U.S. House of Representatives
Committee on Resources
Washington, DC 20515

August 2, 1995

The Hon. John T. Doolittle
Chairman, Subcommittee on Water and Power Resources
Committee on Resources
1337 Longworth H.O.B.
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am enclosing several items pertaining to the Subcommittee's consideration of H.R. 1906. I request that these items be included in the official record of the hearing. If this hearing record will be printed, I request that these items be included in the printed record as well.

The items are as follows:

1. July 20, 1995 letter from Rodney M. Fujita, Ph.D., Senior Scientist, Environmental Defense Fund, Oakland, CA;

2. July 21, 1995 editorial of the *San Francisco Chronicle*, "Unraveling the Peace in State Water Wars";

3. July 21, 1995 article by Michael Doyle from *The Sacramento Bee*, "'92 Water Law Under Pressure";

4. July 23, 1995 editorial of the *San Francisco Chronicle*, "Breaking the Peace in the Water Wars";

5. July 27, 1995 editorial of the *Los Angeles Times*, "Let the Water Wars Cool Off";

6. August 1, 1995 editorial of the *San Jose Mercury News*, "Water Wherefore".

Thank you for your cooperation.

Sincerely,

GEORGE MILLER
Ranking Democratic Member

ENVIRONMENTAL
DEFENSE FUND

July 20, 1995

California Office
Rockridge Market Hall
5655 College Ave.
Oakland, CA 94618
(510) 658-8008
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Editor
San Francisco Chronicle
901 Mission Street
San Francisco, CA 94103-2988

To the Editor:

This year's big salmon catch is truly cause for celebration ("Fishery Strategies Paying Off", July 19, 1995). However, the bountiful harvest shouldn't lull us into a false sense of security about the health of our wild salmon or the health of the Bay-Delta and Central Valley ecosystems upon which they -- and we -- depend.

In recent years, California's rich salmon fishery has been based primarily on hatchery-raised fall run chinook, paid for by the highly successful salmon stamp program. The wild salmon that once ran plentifully in the spring, the fall, the late fall, and the winter used the natural ecosystems of the Bay-Delta and Central Valley year-round. This provided crucial insurance against the effects of periodic droughts, reduced ocean productivity, and other natural environmental changes. However, dams, water diversions, pollution, and other factors have combined to destroy the habitats of our wild salmon runs, severely reducing the effectiveness of nature's insurance policy and leaving California's salmon fishery primarily dependent on hatchery-reared stocks.

For the last three years, West Coast salmon have suffered from a lack of food in the ocean, a result of unusually low ocean productivity associated with a string of El Ninos. Improved ocean productivity off California's coast may explain, in part, the tremendous harvest of hatchery raised salmon this year. But the fact that fish raised in California hatcheries are very abundant in this year of good ocean productivity while wild fish are not tells us that the natural ecosystems that support wild salmon -- spawning streams, rivers, wetlands, shallow waters, and the estuary -- are still in poor shape. The restoration of these natural ecosystems, in combination with the wise use of hatcheries and appropriate harvest management measures, is the key to a healthy salmon fishery over the long run and to the restoration of our region's noble wild salmon.

Sincerely,

Rodney M. Fujita, Ph.D -- Senior Scientist

National Headquarters

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San Francisco Chronicle
THE VOICE OF THE WEST

7/21/95

Unraveling the Peace In State Water Wars

THE BROAD, all-encompassing sweep of opposition to a legislative proposal to gut the 1992 Central Valley Project water reforms, evident in congressional hearings yesterday, offers dramatic proof of the fundamental soundness of the original reforms and the broad-based consensus that produced them.

That historic achievement, which for the first time extended the benefits of the state's massive federal water system to all stakeholders — agricultural, urban and environmental — must be preserved intact and protected against the greed of narrow special interests that would profit from renewing California's water wars.

Doolittle's bill would undo a consensus on water it took years of painful effort to achieve

The legislation to reverse the 1992 reforms is the work of Representative John Doolittle, R.-Sacramento, who serves as legislative handmaiden for a small group of wealthy agricultural interests in the San Joaquin Valley. This subset of federal water contractors has never been able to accept the 1992 law's modest limitations on their traditional water subsidies and privileges — reforms that were crafted to spread some of the benefits of federally subsidized water to cities, businesses, fish and wildlife.

The Doolittle bill's backers represent the radical fringe of a diverse group of farmers dependent on Central Valley Project water, including many who have reconciled themselves to working within the 1992 reforms.

The support of many of those farmers for the existing law was reaffirmed this week by Tom Haller, director of the Community Alliance With Family Farmers, who argued that "It is better to work with the existing legislation in the implementation process, which we have found to be flexible and open, rather than radically change it in a way that will undermine its intent."

Haller's group, like fishing associations, business groups and urban water districts, has had specific complaints about the implementation and interpretation of the 1992 reforms. But most have concluded, correctly, that any changes should be accomplished administratively and "through a consensus-based process of all stakeholders," as Roger Thomas, president of the Golden Gate Fisherman's Association put it.

Indeed, the only major interest that does not totally reject the Doolittle "reforms" are the big urban districts, including San Francisco, which oppose the basic thrust of the legislation but are willing to negotiate limited amendments.

That approach — seeking a reasonable compromise with a group that has never shown any interest in compromise or cooperation — is playing with fire. As Sunne Wright McPeak, head of the Bay Area Economic Forum argued: "Amending the (law) at this critical juncture would . . . jeopardize the mutual trust that has developed among all of the different players."

That broad, consensus-based approach has served California well. It is vital that all the major interests stick with it.

A8 The Sacramento Bee Final • Friday, July 21, 1995

WASHINGTON

'92 water law under pressure

City interests join farmers in calling for new Central Valley policy

By Michael Doyle
Bee Washington Bureau

WASHINGTON – California's politically potent urban water districts voiced support Thursday for legislative changes in a 1992 Western water reform law.

This amounts to a mutual defense pact with Central Valley farmers, who initially drafted the new legislation. It means farmers are no longer isolated, but are potentially allied again with agencies serving two-thirds of the state's residents.

That alliance still must negotiate important differences over what specific changes are needed in the 1992 law reforming the Central Valley Project. It also must survive a skeptical Senate and the partisanship that flared Thursday at a House subcommittee hearing.

The politically significant development, however, is the urban-rural consensus that new law is again needed for the CVP's Redding-to-Bakersfield grid of dams, canals and power plants.

"After three years of experience, we do believe both legislative and administrative changes are required," said Timothy Quinn, deputy general manager of the Metropolitan Water District of Southern California. "There are problems to be solved."

The 1992 law, written and passed with the Metropolitan Water District's help, dedicates more CVP water to fish and wildlife restoration. It guarantees water supplies to refuges, charges farmers an extra fee to fund environmental work and eliminates the right to perpetual renewal of irrigation contracts.

> "The (Clinton) administration is concerned that reopening the (law) ... will lead to the return of gridlock in California's water policies."
>
> Dan Beard
> Bureau of Reclamation

Environmental groups and the Clinton administration believe the 1992 law is still too new to change, with outgoing Bureau of Reclamation Commissionor Dan Beard telling a House panel Thursday that legislative changes are "premature and unnecessary."

"The administration is concerned that reopening the (law) ... will lead to the return of gridlock in California's water policies," Beard testified before the House water and power resources subcommittee chaired by Rep. John Doolittle, R-Rocklin.

Beard helped write the 1992 law as a House staffer. He's leaving his bureau position by September, however, and his proposed replacement is a civil engineer with a reputation more for compromise and consensus than environmental advocacy.

Moreover, the bureau is already making administrative concessions – for instance, clarifying that water meters are not required on renewed contracts.

Emboldened by the Republican takeover of Congress, Valley lawmakers earlier this year introduced their package of refinements to the 1992 law.

The new legislation authored by Doolittle and others would reinstate the guaranteed 25-year renewal of irrigation contracts, eliminate a study of restoring the San Joaquin River, cap farmers' fees and make other changes.

Urban agencies, from the Santa Clara Valley Water District in the north to the San Diego County Water Authority in the south, announced support Thursday for several key concepts in the bill. These include an end to tiered pricing, under which farmers pay more for using more water, and a return to guaranteed water contract renewals.

A26 *** FRIDAY, JUNE 23, 1995

San Francisco Chronicle

THE VOICE OF THE WEST

EDITORIALS

Breaking the Peace In the Water Wars

THE LONG and destructive California water war, which was quieted by a sensible legislative cease-fire three years ago, is on the verge of full-scale resumption, thanks to the unquenchable greed and incurable myopia of Central Valley agricultural interests and their water-carriers in Congress. Unless Senators Dianne Feinstein and Barbara Boxer take a firm stand against these troublemakers when their legislative assault reaches the upper house, California could be swept back into a political whirlpool that will threaten not only the environment but the state's fragile economic recovery.

The state's economy could be swept back into a dangerous political whirlpool

The new declaration of war comes in the form of legislation introduced this week by Representative John Doolittle and other Central Valley representatives that seeks to overturn the 1992 Central Valley Project Implementation Act, signed into law by President Bush. That law brought badly needed reform to an archaic and expensive system of subsidized farm irrigation that had wreaked disaster on the aquatic environment and nearly destroyed the commercial fishing industry.

Doolittle's rear-guard attack would "reform" those reforms by, among other things: stripping them of virtually all the additional water that had been promised for fish and wildlife restoration; eliminating a study of fisheries in the San Joaquin River; restoring overly generous, subsidized, 40-year water delivery contracts to growers; reducing fees for an environmental fund; scrapping a requirement for doubling the salmon populations; and turning fish restoration programs over to the state.

Save San Francisco Bay Association director Barry Nelson called the Doolittle bill "the legislative equivalent of a drive-by shooting," a statement that reflects the depth of divisiveness this legislation could re-engender. Indeed, until the Republicans captured Congress last November, a productive if fragile process of cooperation was growing among the state's competing water interests — farmers, environmentalists and urban users.

The main fruit of that consensus was last fall's voluntary Bay-Delta Accord, which dealt with improving water quality standards for fish and wildlife in the delta and bay in order to meet Clean Water Act and Endangered Species Act requirements. But the Bay-Delta Accord was built on the framework of the Central Valley Project reforms of 1992. If those are gutted, the 1994 water quality accords and the state water board's brand new water allocation plans would become virtually meaningless.

Senators Feinstein and Boxer represent the best hope for disarming these unreconstructed water warriors so that, one day, sensible policies and predictable supplies may prevail in California.

LOS ANGELES TIMES THURSDAY, JULY 27, 1995

EDITORIALS of THE TIMES

Let the Water Wars Cool Off

In California, Mark Twain said about a hundred years ago, whiskey is for drinkin' and water is for fightin'. For most of this state's recent history, that indeed has been the case, with farmers fighting city folks and Northern California fighting Southern California over what in this largely arid state is a precious resource.

In the last couple of years, however, political infighting has died down thanks to a series of reasonable and farsighted compromises, chief among them a much-needed reform of how the state's biggest man-made water source operates. That source is the Central Valley Project, a series of dams and canals built by the federal government in the 1930s to bring river water from the north to farms in the southern San Joaquin Valley.

For almost two generations the CVP sold heavily subsidized water to large and sometimes inefficient farms, even in times when California's cities were struggling through drought. That finally began to change in 1992 when President George Bush signed a law intended to bring a measure of free-market economics to CVP operations. Among other things it allowed farmers to sell their surplus water to cities and set more realistic rules for long-term water contracts, shortening them from 40 to 25 years and requiring that they be reviewed after they lapse rather than being renewed automatically.

Since that law went into effect, it seems to have worked reasonably well, although some technical fine-tuning has been suggested. That, unfortunately, is not good enough for some agribusiness interests and San Joaquin Valley water districts that were never happy with the CVP reform law in the first place. They want the new Republican majority in Congress to simply scrap the whole reform law, and they have prodded a number of Congress members from the Central Valley, chiefly Rep. John T. Doolittle (R-Rockland), to push legislation that does just that. Doolittle's bill, HR 1906, is now before the House subcommittee on water and power resources—where it should die.

The CVP reform law is too new to require any rewriting. It should be monitored, to be sure, and where necessary modified administratively by the federal government in consultation with the affected parties. But reopening the years-long negotiations that resulted in the CVP law is politically unwise. That would lead to the reopening of other political water fights, not least among them the even more complex compromise on water quality in San Francisco Bay and the Sacramento River Delta, the state's biggest natural source of water. If Doolittle and other shortsighted folks in the Central Valley get their way, the cynical wisdom of Mark Twain's wit will be proved for another hundred years. A populous and increasingly urbanized California can't afford that.

San Jose Mercury News

Serving Northern California Since 1851

TUESDAY
AUGUST 1, 1995

Editorials & Letters

Water wherefore

Rules must reflect California of today, not the 1950s

IN 1992, the decades-old operating rules of the federal water system in California were updated to reflect today's economy, today's demographics and today's environmental values.

The Central Valley Project Improvement Act changed a system that had been established largely to benefit agriculture. It set up a more open market in water, recognized the vastly increased needs of urban areas, and belatedly began to arrest the precipitous decline in fish populations.

Since then, the Democratic majority in Congress has yielded to a Republican one, many of whose members would like to go through the field of environmental regulation with a scythe.

Central Valley agribusinesses think this new Congress could usefully reconsider the reform act. One need not claim perfection for the act to be nervous about subjecting it to pruning so soon, and by these gardeners.

The Central Valley Project is a system of dams and canals that divert, to farms and cities, water that otherwise would flow into the Sacramento-San Joaquin Delta and San Francisco Bay.

Changing its operation to benefit the environment was bound to be an experimental process. As regards when to pump, where to put fish screens and so forth, the government should be open to modifications as long as they do not slight environmental standards.

Changes in procedures should be tried before revising the law.

And on the larger issue of changing the system's goals, Congress should stand firm. The Central Valley Project must reflect California today, not California of the 1950s.

The reform act reduced water contracts to farmers from 40 years to 25 and ended the policy of automatic renewal. Uncertainty about renewal does put farm owners in limbo about their future and the value of their land, which would plummet without water.

But as long as water delivery is publicly subsidized, the government ought to retain the right to change the program to reflect changing economic needs and potential.

In California, that means more water needs to start flowing toward cities and businesses.

House Committee on Resources
Subcommittee on Water and Power
July 20, 1995

Statement by Representative Gary A. Condit
18th Congressional District, California

HR 1906

Mr. Chairman and Members,

I appreciate the opportunity to provide my comments to you regarding HR 1906. I have looked forward to the day that Congress would hold a public hearing regarding the Central Valley Project Improvement Act of 1992, and the punitive impacts of this so-called "improvement" Act.

As many of you know, I have had serious misgivings regarding the Central Valley Project Improvement Act since it was passed by the Congress in 1992. I voted against the CVPIA, and am now pleased to join a bi-partisan group of California congressional members whose purpose is to remove some of the most punitive provisions of the CVPIA, and to bring some balance into our water delivery system.

The CVPIA of 1992 originally passed out of the then House Natural Resources Subcommittee on Water and Power based upon the promise that good faith honest negotiations would continue in order to craft a piece of legislation that would be acceptable to the farming community. Without that promise, this measure would not have passed out of the committee. I was not a member of the then House Natural Resources Committee that wrote the bill, and I voted against it when it came before the full House, because those honest negotiations never did occur. As we all know, the proponents of so-called "reform" were never seriously interested in a balanced approach to this issue, and the result has been a "regulatory drought" of unprecedented proportions.

We now have unique opportunity to revisit the CVPIA and remove some of its non-sensical provisions, as well as to restructure it in such a way as to bring about the badly needed certainty of water supply to agriculture. HR 1906 would accomplish this by:

- Repealing the San Joaquin River Comprehensive Plan, thereby ending the threat of the San Joaquin River Restoration plan;

- Providing for assurances that no more than 800,000 acre-feet of CVP yield would be taken for environmental purposes by crediting water taken for the Endangered Species Act and Bay-Delta water standards toward the 800,000 acre obligation for environmental purposes;

- Repealing tiered-pricing requirements that act as disincentives for ground water recharge efforts;

- Allowing the environmental Restoration Fund to be used for physical "fixes" to the CVP that would benefit the environment while also improving water deliveries;

- Requiring water district approval for out of project transfers;

- Providing for successive renewals of 25 years for long-term contract renewals. Two and three year interim contracts (pending the completion of the Programmatic Environmental Impact Statement) would be streamlined with a single interim renewal.

The severe and unwarranted economic hardship faced by our agricultural communities cannot continue. HR 1906 would meet most of the environmental goals provided for under the 1992 Act without also imposing the unnecessary and severe adverse costs that have been incurred by CVP customers and the public during the last two years.

This legislation brings balance and certainty to the system by addressing California's agricultural, urban and environmental water needs. I look forward to working with this Subcommittee, as well as with the full Congress on restructuring this Act to ensure that these goals are accomplished in a fair and reasonable manner.

United States House of Representatives
Committee on Resources
Subcommittee on Water and Power Resources
The Honorable John Doolittle, Chairman

Statement of the Central Valley Project Water Association
20 July 1995
Washington, DC

The federal Central Valley Project (CVP) serves agricultural, municipal and industrial water customers throughout the Central Valley of California from Redding to Bakersfield. CVP contractors have a responsibility to provide reliable and affordable water service to over 20,000 farms on three million acres of the nation's most productive farmland, and to two million households and industrial water users. Meeting these responsibilities is the most critical charge to the CVP's contractor/customers. However, in addition to water service and flood control, the CVP (a multi-purpose project) has significant environmental obligations - chiefly and most recently, those enumerated and outlined in the Central Valley Project Improvement Act of 1992 (P.L. 102-575, title 34; "CVPIA") and the 15 December 1994 Bay/Delta principles agreement.

Having closely participated in literally hundreds of "interest-group" meetings and two and one-half years of attempts at interpretation and implementation by the responsible federal agencies (primarily the Bureau of Reclamation and Fish and Wildlife Service), it is abundantly clear that additional direction is necessary to make the CVPIA work efficiently and properly. While there may be existing authority to make or establish CVPIA implementation directions at the administrative level, there are clearly areas where additional authority or changes in current legislative mandates are required if the CVPIA is to be efficiently and appropriately implemented. Further, even where there is existing authority to take action or make policy with regard to CVPIA implementation, the federal agencies have been reluctant to act accordingly due to lack of clear Congressional narrative (report language) establishing what is meant/was intended by certain CVPIA provisions.

HR 1906 maintains the spirit and substance of the CVPIA with respect to environmental protection, restoration and mitigation. At the same time, it also clearly excises those provisions of the CVPIA which are patently punitive in nature and have no intended or reasonably expected environmental benefit. In essence, amending the CVPIA through the provisions of HR 1906 will provide the foundation necessary for timely and efficient implementation of environmental improvements to CVP facilities and operations and will achieve a proper balance among the Project's purposes and obligations. For these fundamental reasons and for those outlined below, we appreciate the Subcommittee's attention to the critical issues addressed by this legislation and strongly support passage of HR 1906.

The Bay/Delta Agreement

Regardless of HR 1906's legislative status, the CVP will meet its Bay/Delta water quality obligations (under the Clean Water Act) and its federal and state ESA obligations. In reality, the amendments to the CVPIA will provide a clearer connection between these various mandates by focusing the law and its environmental improvements on upstream and in-refuge environmental improvements and Project operations changes for fish and wildlife benefits (i.e., rather than three overlapping mandates, the CVPIA/CVPRA and ESA will get the fish born and to the Delta, then the Bay/Delta will get the fish raised and through the Delta to the ocean - and the reverse when the fish return) This is an effort to focus scarce resources and to speed up implementation of actual protection, mitigation and restoration activities and programs.

The proposed legislative changes to the CVPIA are intended to be consistent with environmental improvements under the 15 December Bay/Delta agreement and more efficient use of finite water and financial resources in the Central Valley. Further, by focusing CVPIA efforts towards identification of key environmental needs (salmon and steelhead runs, for example) and towards timely implementation of programs and activities, it is intended that real environmental improvement will be realized more quickly and efficiently. For instance, by removing the issue of accounting for the 800 KAF from debate, resources can be focused on coordinating CVPIA, Bay/Delta and ESA flow and timing requirements such that maximum benefit is derived and the water is most efficiently used.

Furthermore, by focusing "fish doubling" resources on coordinating efforts with the State program (to which all water and power projects in the state are obligated), previously identified mitigation and restoration activities can be immediately implemented rather than waiting for a stand-alone federal program to be developed. Further, many of the "Category III" actions in the Bay/Delta agreement which provide for upstream protection, restoration or mitigation may be the same as or similar to CVPIA upstream or through-Delta "fish fixes". Again, by targeting resources on "what we already know of and can do", we will be moving closer to the goals of the CVPIA, the state doubling goal and the Bay/Delta agreement with regard to fishery protection, mitigation and restoration.

800,000 acre-feet of CVP Water

The criticism that HR 1906 would "define the 800,000 acre-feet out of existence" is based on the notion that the 800 KAF should not be counted if it does not reduce contract deliveries, regardless of year type or whether the purpose for which it is used has been achieved (i.e., it has to hurt contractors to be credited to the CVPIA obligation). However, the 800 KAF was not intended to be punitive to contractors. To the contrary, multiple uses of this water was, and is, encouraged (again, consistent with the Bay/Delta Agreement). The amendments end the debate over accounting for the 800 KAF and place an obligation on the Fish and Wildlife Service to determine fish needs and priorities such that the Project will be reoperated to meet these needs. Once the reserved water has done its job for the environment, it can be diverted or reused if possible.

Under current law, the Bureau and US Fish and Wildlife Service are to dedicate and manage 800 KAF of CVP "yield" for fish and wildlife purposes. Substantial controversy has arisen over priorities and use of this 800 KAF, as well as an appropriate accounting method. The proposed revision would affirm the reservation and management of the 800 KAF, consistent with the 15 December 1994 Bay/Delta Agreement. The water would be available to meet CVP Bay/Delta and Federal ESA obligations. The proposed language would also clarify that the 800 KAF can be reused or diverted to agriculture or M&I purposes after it has fulfilled its environmental purpose.

With regard to meeting Bay/Delta standards, since the focus of the CVPIA is upstream (and the focus of the Bay/Delta Agreement is in and through-Delta), it is appropriate that the focus of the 800 KAF be upstream not some generic "outflow" or "export restriction". This is not to say that an ecologically justifiable prescription, such as a pulse flow for the passage of a particular species not already protected by the Bay/Delta standards, would be limited or prohibited by the proposed change.

Doubling Anadromous Fish Production

The CVP only, federal only plan is being deleted AND REPLACED by a mandate that the federal government participate in a joint effort with the state and local agencies in meeting the goals of the Salmon, Steelhead Trout and Anadromous Fisheries Program Act of 1988. That Act and subsequent Salmon and Steelhead reports by the CA Dept. of Fish and Game (CDFG) provided the basis for the "fish fixes" enumerated in the CVPIA. As such, the Department of the Interior need not and should not be re-inventing a fish doubling program separate and distinct from the established State program. This is a waste of valuable time and financial resource.

The HR 1906 amendments are intended to accelerate the implementation of programs and activities that have already been identified and studied and have a reasonable potential for achieving fishery benefits. By establishing priorities based on identified needs of native species of concern (salmon and steelhead), immediate protection, mitigation and restoration actions can be undertaken.

By authorizing and requiring the federal agencies to work jointly with the state of California, making the CVPIA fish doubling program a part of the larger State program, the federal actions taken under authority of the HR 1906 fish doubling section can be better coordinated with the implementation of Bay/Delta water quality standards and the reservation and use of the 800,000 acre feet of CVP water.

Thus the proposed revision provides a nexus between federal/CVPIA "fish doubling" activities and State sponsored or required actions - eliminating potential redundancies and providing for timely and efficient implementation of activities and programs based on years of CDFG study.

The Restoration Fund

To date, an inordinate emphasis has been placed on Restoration Fund collections. The expenditure side, from the perspective of greatest good for and the most critical need of, the environment has been sorely neglected. Through elimination of the artificial 34/66 percent spending cap, it is intended that the Secretary will have greater discretion in allocating Restoration funds to programs and activities from which the most benefit may derived. Concurrently, elimination of the $50 million hammer clause will eliminate a purely punitive aspect of the CVPIA which in most years would likely result in creation of a deficit obligation.

The San Joaquin River

In a fashion similar to the changes proposed for the "fish doubling plan", HR 1906 would take advantage of a significant body of ecological study recently completed under state law on the San Joaquin - focusing efforts and resources on timely implementation of real environmental improvements. (Friant Division customers will continue to contribute millions of dollars to San Joaquin River mitigation and restoration efforts.)

The Trinity River

Decades of work and tens of millions of dollars spent on study of the Trinity River system have yet to yield a comprehensive analysis of the system's needs. The amendments proposed in HR 1906 are meant to establish the requirement for public participation and input into upcoming decisions regarding changes in the flow regime and other mitigation, protection or restoration activities identified for the Trinity by the environmental studies ongoing and due for completion.

Refuge Water Supplies

The CVPIA currently provides for firm water supplies to identified Central Valley wildlife refuges. The proposed legislative changes do not alter these amounts. The proposed changes do however, make provisions of refuge supplies into CVP operations and environmental obligations more consistent with mandates on other water uses by requiring the implementation of water management and conservation practices, an analysis of refuge needs, and by linking shortages to refuges to shortages imposed on other users in the same CVP division.

Transfers

The federal agencies' interpretation and implementation of the CVPIA transfer provisions has resulted in a hindrance rather than a help to efficient water transfers and management practices. The proposed legislative changes would enhance efficient water management practices within the CVP service area and transfers to outside of the service area and would provide for greater water district oversight over proposed transfers using specific enumerated criteria in the light of potential adverse environmental and economic impacts. (Note: under these provisions, a district could not deny a proposal for transfer without justification.)

Since enactment of the CVPIA only one water transfer from within the CVP to a non-CVP district outside the service area has been proposed (that proposal is no longer being pursued for reasons unrelated to the CVPIA). At the same time, numerous (environmentally and economically sound) intra-CVP water management transfers have been delayed or denied due to unnecessary imposition of CVPIA requirements.

Contract Provisions

The current three/two year interim contract renewal process has proven to be logistically and economically impractical, and provides no real environmental benefit. The proposed legislative changes would provide for a single interim renewal contract until the completion of the CVPIA Programmatic Environmental Impact Statement and appropriate site-specific environmental analysis. Contrary to critics' arguments that this and other proposed changes to the CVPIA contract provisions are somehow detrimental to the environment, this change will likely result in the timely completion of environmental analysis by freeing up federal resources - ultimately resulting in contracts that reflect up to date and studied CVP environmental conditions.

Further, the current restrictions on long term contract renewal are inconsistent with federal reclamation law and state law regarding contract renewal, have adverse financial consequences and provide no real environmental benefit. California water law and federal reclamation laws applicable everywhere else across the west provide a right of successive contract renewal. Limiting renewal creates uncertainty for long-term financing and planning - with consequent financial costs to contractors (how many banks would write 30 year mortgages to people who by law will be unemployed in 25 years or less?) As a defined contract length is critical to securing economical long-term financing, the incentive to complete the required environmental review and enter into long-term contracts remains.

As a result and despite what critics of attempt to refine the CVPIA contracting provisions may claim, there is no threat to meeting environmental obligations as a result of long-term contracts since the Project is operated to meet the environmental requirements of federal water quality, federal and state endangered species needs and CVPIA mandates before deliveries of water under contract are made. Further, the State Water Resources Control Board and state law requirement that water be put to reasonable beneficial use are the true and appropriate authorities for making decisions regarding use of California's water resources.

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